

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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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 801-359-0759. 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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SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for August 2010 Medicaid Rate Changes

Effective August 1, 2010, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies, as well as potential adjustments to existing codes. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between June 16, 2010, 12:00 a.m., and July 01, 2010, 11:59 p.m. are included in this, the July 15, 2010 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 Rules being repealed are completely struck out.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 August 16, 2010. 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 November 12, 2010, 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

**Commerce, Occupational and
Professional Licensing
R156-60d
Substance Abuse Counselor Act Rule**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 33783
FILED: 06/24/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2010 Legislative Session, S.B. 90 was passed which amended the Substance Abuse Counselor Act, Title 58, Chapter 60, Part 5. This filing updates the rule to make it consistent with changes made in the governing statute. In addition, the Division and Substance Abuse Counselor Licensing Board reviewed the rule and determined changes need to be made to the rule. The filing also makes minor corrections. (DAR NOTE: S.B. 90 (2010) is found at Chapter 214, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: Throughout the rule, where appropriate, the term "Division" and "Board" have been capitalized. S.B. 90 made changes to the qualifications to be a supervisor of a certified substance abuse counselor. In Section R156-60d-302b, amendments to this section make the rule consistent with the new statute. In Section R156-60d-302c, the current rule allows for a passing score on the International Certification Examination for Alcohol and Drug Counselors of the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Inc. (ICRC/AODA, Inc.) to satisfy the examination requirement, but only until 01/01/2010. The Division and Board feel that a passing score on this examination should always meet the examination requirement, not just until 01/01/2010. Although the ICRC/AODA, Inc. examination is no longer administered in Utah, it is administered in several other states. Substance abuse counselors practicing in other states may find it difficult to become licensed in Utah if they only took and passed the ICRC/AODA, Inc. examination. The ICRC/AODA, Inc. examination is substantially equivalent in content to the National Association of Alcohol and Drug Abuse Counselors (NAADAC) examination. In Section R156-60d-304, the proposed amendments clarify the difference between deadlines for completion of continuing education for licensed substance abuse counselors and certified substance abuse counselors. The term "period" is replaced with the term "renewal cycle". The term "qualified continuing professional education" is replaced with "continuing education" and other minor technical changes are made. In Section R156-60d-307, the proposed amendment adds passing of the

NAADAC examination as a possible requirement for reinstatement of a license for someone whose license has been expired for over two years. In Section R156-60d-502, the proposed amendments update the date of the "Ethical Standards of Alcoholism and Drug Abuse Counselors", and new definitions of unprofessional conduct are added to address situations where a substance abuse counselor is also an owner of an agency and has administrative control over someone who is expected to supervise the substance abuse counselor.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-60-501 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

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 amendments only apply to practicing substance abuse counselors and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.
- ◆ **SMALL BUSINESSES:** The proposed amendments only apply to practicing substance abuse counselors and applicants for licensure in those classifications. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to practicing substance abuse counselors and applicants for licensure in those classifications. If an applicant coming from out of state has already passed the ICRC/AODA, Inc. exam but not the NAADAC examination, the proposed amendments will save them time and money, approximately \$200, because the applicant will not be required to take the NAADAC examination. There is no cost to obtain the updated NAADAC ethical standards as they can be found on the NAADAC website. The Division is not able to determine how many out of state applicants the proposed amendment will apply to in order to determine an aggregate savings amount.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to practicing substance abuse counselors and applicants for licensure in those classifications. If an applicant coming from out of state has already passed the ICRC/AODA, Inc. exam but not the NAADAC examination, the proposed amendments will save them time and money, approximately \$200, because the applicant will not be required to take the NAADAC examination. There is no cost to obtain the updated NAADAC ethical standards as they can be found on the NAADAC website.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing conforms the rule to recent statutory amendments relating to the supervision of substance abuse counselors, continues to offer a choice of examinations for applicants, updates references and makes other technical corrections. No fiscal impact to businesses is anticipated beyond those addressed in the statute. License applicants may benefit from having an option in the type of examinations the Division accepts for the examination requirement.

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 AT 5:00 PM ON 08/16/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 07/21/2010 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/23/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-60d. Substance Abuse Counselor Act Rule.

R156-60d-103. Authority - Purpose.

This rule is adopted by the [d]Division under the authority of Subsection 58-1-106(1)(a) to enable the [d]Division to administer Title 58, Chapter 60, Part 5.

R156-60d-302b. Qualifications for Licensure - Experience Requirements.

(1) In accordance with Subsections 58-60-506(2)(a)(iii)(A), (2)(b)(iii)(A), (2)(c)(ii)(A), (2)(d)(ii)(A), the supervised qualifying experience shall:

(a) be supervised experience providing substance abuse counseling services as defined in Subsection 58-60-502(7);

(b) be completed in an approved agency as defined in Subsection 58-60-502(1);

(c) be supervised at a ratio of one hour of face-to-face direct supervision for every 40 hours of substance abuse counseling services provided by a supervisor who shall:

(i) ~~until July 1, 2011,~~ be licensed as a substance abuse counselor with at least one year of experience as a licensed substance abuse counselor; ~~or~~

(ii) beginning on July 1, 2011, be licensed as a substance abuse counselor with at least two years of experience as a licensed substance abuse counselor; or

~~_____~~ (iii) be a licensed mental health therapist qualified by education and experience to treat substance abuse.

(d) be completed only when a licensed substance abuse counselor or mental health therapist is at the site where the supervised experience is occurring.

(2) In accordance with Subsection 58-60-511(1), hours of experience required by Section 58-60-506 that are earned after January 1, 2008 shall be earned while the person earning the hours is licensed as a certified substance abuse counselor, certified substance abuse counselor intern or certified substance abuse counselor extern.

R156-60d-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsection 58-60-506(1)(e), the examination required for licensure is one of the following:

(1) the written NAADAC National Certification Exam Levels I, II, or MAC with a minimum criterion score set by NAADAC; or

(2) ~~before January 1, 2010,~~ the written International Certification Examination for Alcohol and Drug Counselors of the ICRC/AODA, Inc., with a minimum criterion score as set by ICRC/AODA, Inc.

R156-60d-304. Continuing Education for Licensed Substance Abuse Counselors and Certified Substance Abuse Counselors.

(1) In accordance with Section 58-60-105, there is created a continuing education requirement as a condition for renewal or reinstatement of a licensed substance abuse counselor[s] and/or certified substance abuse counselor[s] license[s] issued under Title 58, Chapter 60, Part 5.

(2) Continuing education shall consist of 40 hours of ~~[qualified continuing professional]~~ education directly related to the licensee's professional practice ~~[in each preceding two year period of licensure or expiration of licensure]~~. A licensed substance abuse counselor shall complete the requirement during each two year license renewal cycle and a certified substance abuse counselor shall complete the requirement during each two year period following the date of initial licensure. At least six of the 40 required hours must be in the area of professional ethics and responsibilities.

(3) The required number of hours of ~~[professional]~~ continuing education for a ~~[n individual]~~ licensed substance abuse counselor who first becomes licensed during the two year ~~[period]~~ renewal cycle shall be decreased in a pro rata amount equal to any part of that two year ~~[period]~~ renewal cycle preceding the date on which that individual first became licensed.

(4) The standards for ~~[qualified]~~ continuing ~~[professional]~~ education shall include:

(a) a clear statement of purpose and defined objective for the educational program directly related to the practice of a substance abuse counselor;

(b) documented relevance to the licensee's professional practice;

(c) a competent, well-organized, and sequential presentation consistent with the stated purpose and objective of the program;

(d) preparation and presentation by individuals who are qualified by education, training, and experience; and

(e) a competent method of registration of individuals who actually completed the ~~[professional]~~continuing education program and records of that registration completion available for review.

(5) Credit for ~~[professional]~~continuing education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for ~~[professional]~~continuing education completed in blocks of time of not less than 50 minutes in formally established classroom courses, seminars, conferences, workshops, institutes, or in services;

(b) a maximum of ten hours per two year period may be recognized for teaching in a college or university, or teaching ~~[qualified]~~continuing ~~[professional]~~education courses in the field of substance abuse; and

(c) a maximum of six hours per two year period may be recognized for clinical readings or internet-based courses directly related to practice as a substance abuse counselor.

(6) A licensee shall be responsible for maintaining competent records of completed ~~[qualified professional]~~continuing 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.

(7) A licensee who documents he is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section may be excused from the requirement for a period of up to five years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-60d-307. License Reinstatement - Requirements.

In accordance with Subsection R156-1-308g, an applicant for reinstatement of a license after two years following expiration of that license shall demonstrate competency by:

(1) meeting with the ~~[b]~~Board upon request for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a substance abuse counselor and to make a determination of any additional education, experience or examination requirements which will be required before reinstatement;

(2) passing the written International Certification Examination for Alcohol and Drug Counselors of the ICRC/AODA, Inc. or the NAADAC National Certification Exam Levels I, II, or MAC if it is determined by the ~~[b]~~Board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a substance abuse counselor; and

(3) completing at least 40 hours of ~~[professional]~~continuing education in subjects determined by the ~~[b]~~Board as necessary to ensure the applicant's ability to engage safely and competently in practice as a substance abuse counselor.

R156-60d-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) ~~[any]~~violation of any provision of the "Ethical Standards of Alcoholism and Drug Abuse Counselors" established by the NAADAC, ~~[December 8, 2004]~~August 18, 2008 edition, which is hereby incorporated by reference;

(2) exercising undue influence over the clinical judgment of a supervisor over whom the licensee has administrative control;

(3) if licensed as a licensed substance abuse counselor, accepting the duties as a supervisor of a certified substance abuse counselor or a certified substance abuse counselor intern who has any supervisory control over the licensed substance abuse counselor; and

(4) directing one's mental health therapist supervisor to engage in a practice that would violate any statute, rule, or generally accepted professional or ethical standard of the supervisor's profession.

KEY: licensing, substance abuse counselors

Date of Enactment or Last Substantive Amendment: ~~[August 24, 2009]~~2010

Notice of Continuation: April 10, 2006

Authorizing, and Implemented or Interpreted Law: 58-60-501; 58-1-106(1)(a); 58-1-202(1)(a)

Commerce, Occupational and Professional Licensing **R156-64** Deception Detection Examiners Licensing Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33780

FILED: 06/22/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Deception Detection Examiners Board reviewed the rule and determined changes should be made to clarify parts of the definition and unprofessional conduct sections to address polygraph counter measures that are becoming more frequently utilized.

SUMMARY OF THE RULE OR CHANGE: In Section R156-64-102, added definitions for new terms "activity sensor" and "concealed information exam". Renumbered remaining subsections. In Subsection R156-64-502(8), amendments clarify the number of deception detection examinations that can be completed in a 24-hour period; Subsection R156-64-502(9) amendments provide three types of deception detection exams to be given and the duration of

each type of examination; Subsection R156-64-502(10), amendment provides that after 01/01/2011, it will be considered unprofessional conduct for failing to use an activity sensor in all testing unless the examinee suffers from a diagnosed medical condition that contraindicates its use.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-64-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

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 printing and mailing costs incurred will be absorbed in the Division's current budget. In addition, the proposed amendments will cost state agencies who are involved in deception detection examinations approximately \$500 per sensor to purchase an activity sensor if the agency is not already in compliance with the requirement. The Division is not able to determine how many state agencies will need to purchase the sensors.

◆ LOCAL GOVERNMENTS: The proposed amendments will cost local government agencies who are involved in deception detection examinations approximately \$500 per sensor to purchase an activity sensor if the agency is not already in compliance with the requirement. The Division is not able to determine how many local government agencies will need to purchase the sensors.

◆ SMALL BUSINESSES: The proposed amendments will cost small businesses who are involved in deception detection examinations approximately \$500 per sensor to purchase an activity sensor if the business is not already in compliance with the requirement. The Division is not able to determine how many small businesses involved in deception detection exams will need to purchase the sensors.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments only apply to licensed deception detection examiners and applicants for licensure in that classification. The proposed amendments will cost licensed deception detection examiners approximately \$500 per sensor to purchase an activity sensor if the individual/company is not already in compliance with the requirement. The Division is not able to determine how many licensees/companies involved in deception detection exams will need to purchase the sensors.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed deception detection examiners and applicants for licensure in that classification. The proposed amendments will cost licensed deception detection examiners approximately \$500 per sensor to purchase an activity sensor if the individual/company is not already in compliance with the requirement. The Division is not able to determine how many licensees/companies involved in deception detection exams will need to purchase the sensors.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing requires those who administer polygraphs to purchase an activity sensor for each device which would detect countermeasures taken by examinees. Affected persons will see a cost of approximately \$500 per sensor, but such cost is mitigated by the increased reliability of examinations. The industry that makes these sensors will see a correlating fiscal benefit.

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:

◆ Clyde Ormond by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/16/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 07/28/2010 01:00 PM, Heber Wells Bldg, 160 E 300 S, Conference Room 402, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/23/2010

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-64. Deception Detection Examiners Licensing Act Rule.
R156-64-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 64, as used in Title 58, Chapters 1 and 64 or this rule:

(1) "Activity sensor" means a sensor attached to a deception detection instrument that is approved for use by the manufacturer of the instrument for placement under the buttocks of the examinee to detect movement and attempts at countermeasures by the examinee.

([+]~~2~~) "Clinical testing" means a deception detection examination which is not intended to supplement and assist in a criminal investigation.

([2]~~3~~) "Comparison question" means a nonrelevant test question used for comparison against a relevant test question in a deception detection examination.

(4) "Concealed information exam" means a recognition examination administered to determine whether the examinee recognizes elements of a crime not reported to the public that are known only to the individual who engaged in the behavior, an investigator or both.

_____[3]5) "Deception detection case file" means written records of a polygraph exam including:

- (a) case information;
- (b) examinee information;
- (c) a list of all questions used during the examination;
- (d) copies of all charts recorded during the examination;

and

- (e) either the audio or video recording of the examination.

[4]6) "Experienced deception detection examiner" means a deception detection examiner who has completed over 250 deception detection examinations and has been licensed or certified by the United States Government for three years or more.

[5]7) "Irrelevant and relevant testing" means a deception detection examination which consists of relevant questions, interspersed with irrelevant questions, and does not include any type of comparison questions.

[6]8) "Irrelevant question" means a question of neutral impact, which does not relate to a matter under inquiry, in a deception detection examination.

[7]9) "Post conviction sex offender testing" means testing of sex offenders and includes:

- (a) sexual history testing to determine if the examinee is accurately reporting all sexual offenses prior to a conviction;
- (b) maintenance testing to determine if the examinee is complying with the conditions of probation or parole; and
- (c) specific issue examinations.

[8]10) "Pre-employment exam" means a deception detection screening examination administered as part of a pre-employment background investigation.

[9]11) "Qualified continuing professional education" means continuing education that meets the standards set forth in Section R156-64-304.

[10]12) "Relevant question" means a question which relates directly to a matter under inquiry in a deception detection examination.

[11]13) "Screening exam" means a multiple issue deception detection examination administered to determine the examinee's truthfulness concerning more than one narrowly defined issue.

[12]14) "Specific issue/single issue examination" means a deception detection examination administered to determine the examinee's truthfulness concerning one narrowly defined issue.

[13]15) "Supervision" means general supervision as established in Subsection R156-1-102a(4)(c).

[14]16) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 64, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-64-502.

R156-64-103. Authority - Purpose.

This rule is adopted by the [d]Division under the authority of Subsection 58-1-106(1)(a) to enable the [d]Division to administer Title 58, Chapter 64.

R156-64-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

- (1) not immediately terminating the examination upon the request of the examinee;

- (2) not conducting a pre-examination review with the examinee reviewing each question word for word prior to conducting the examination;

- (3) attempting to determine truth or deception on matters or issues not discussed with the examinee during the pre-examination review;

- (4) basing decisions concerning truthfulness or deception upon less than:

- (a) two charts for a pre-employment exam;

- (b) two charts for a screening exam that is to be followed by a specific issue exam; or

- (c) three charts for all other exams;

- (5) conducting an examination if the examinee is not physically present and aware that an examination is being conducted;

- (6) using irrelevant and relevant testing techniques in other than pre-employment and periodic testing, without prior approval of the [d]Division in collaboration with the [b]Board;

- (7) using a polygraph instrument that does not record as a minimum:

- (a) respiration patterns recorded by two pneumograph components recording thoracic and abdominal patterns;

- (b) electro dermal activity reflecting relative changes in the conductance or resistance of current by the epidermal tissue;

- (c) relative changes in pulse rate, pulse amplitude and relative blood volume by use of a cardiograph;

- (d) continuous physiological recording of sufficient amplitude to be easily readable by the examiner; and

- (e) pneumograph and cardiograph tracings no less than one-half inch in amplitude when using an analog polygraph instrument;

- (8) conducting ~~[more than five deception detection examinations]~~ in a 24-hour period more than:

- (a) five specific issue examinations;

- (b) five clinical examinations;

- (c) five screening examinations;

- (d) five pre-employment examinations; or

- (e) 15 concealed information examinations;

- (9) ~~[conducting an examination of less than a 90 minute duration]~~ conducting an examination of less than the required duration as follows:

- (a) 30 minutes for a concealed information exam;

- (b) 60 minutes for a pre-employment exam; and

- (c) 90 minutes for all other exams;

- (10) ~~[conducting a pre-employment examination of less than a 60 minute duration]~~ failing, after January 1, 2011, to use an activity sensor in all testing unless the examinee suffers from a diagnosed medical condition that contraindicates its use;

- (11) not audibly recording all criminal/specific examinations and informing the examinee of such recording prior to the examination;

- (12) during a pre-employment pre-test interview or actual examination, asking any questions concerning the subject's sexual attitudes, political beliefs, union sympathies or religious beliefs unless there is demonstrable overriding reason;

- (13) publishing, directly or indirectly, or circulating any fraudulent or false statements as to the skill or method of practice of any examiner;

(14) dividing fees or agreeing to split or divide the fees received for deception detection services with any person for referring a client;

(15) refusing to render deception detection services to or for any person on account of race, color, creed, national origin, sex or age of such person;

(16) conducting an examination:

(a) on a person who is under the influence of alcohol or drugs; or

(b) on a person who is under the age of 14 without written permission from the person's parent or guardian;

(17) not providing at least 20 seconds between the beginning of one question and the beginning of the next;

(18) failing during a pretest interview to specifically inquire whether the individual to be examined is currently receiving or has in the past received medical or psychiatric treatment or consultation;

(19) failing to obtain a release from the individual being examined or a physician's statement if there is any reasonable doubt concerning the individual's ability to safely undergo an examination;

(20) not using a numerical scoring system in all specific examinations;

(21) not creating and maintaining a record for every examination administered;

(22) creating records not containing at a minimum the following:

(a) all charts on each subject properly identified by name and date and if the exam was performed on an analog polygraph instrument, signed by the examinee;

(b) an index, either chronological or alphabetical, listing:

(i) the names of all persons examined;

(ii) the type of exam conducted;

(iii) the date of the exam;

(iv) the name of the examiner;

(v) the file number in which the records are maintained;

(vi) the examiner's written opinion of the test results; and

(vii) the time the examination began and ended;

(c) all written reports or memoranda of verbal reports;

(d) a list of all questions asked while the instrument was recording;

(e) background information elicited during the pre-test interviews;

(f) a form signed by the examinee agreeing to take the examination after being informed of his or her right to refuse;

(g) the following statement, dated and signed by the examinee: "If I have any reason to believe that the examination was not completely impartial, fair and conducted professionally, I am aware that I can report it to the Division of Occupational and Professional Licensing";

(h) any recordings made of the examination; and

(i) documentation of an instrument functionality check on a quarterly basis including a calibration chart;

(23) expressing a bias in any manner regarding the truthfulness of the examinee prior to the completion of any testing;

(24) conducting a clinical polygraph examination of a sex offender without holding a current certification from the American Polygraph Association for post conviction sex offender testing;

(25) not maintaining records of all deception detection examinations for a minimum of three years; and

(26) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established by the American Polygraph Association Code of Ethics, dated January 10, 1999, and Standards of Practice, dated January 20, 2007, which are hereby incorporated by reference.

KEY: licensing, deception detection examiner, deception detection intern

Date of Enactment or Last Substantive Amendment: [November 24, 2008]2010

Notice of Continuation: April 9, 2007

Authorizing, and Implemented or Interpreted Law: 58-64-101; 58-1-106(1)(a); 58-1-202(1)(a)

Commerce, Real Estate **R162-2c-203** Utah-Specific Education Certification

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33793

FILED: 06/30/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Instructors of prelicensing education are currently required to pass the mortgage loan originator prelicensing exam in order to obtain an instructor certification. Under the Nationwide Mortgage Licensing System (NMLS), it is not permissible for a person to take this prelicensing exam unless that person is pursuing a license as a mortgage loan originator. Therefore, the commission proposes to change the rule to require a person to pass the principal lending manager exam in order to obtain an instructor certification for Utah-specific prelicensing education.

SUMMARY OF THE RULE OR CHANGE: In Subsection R162-2c-203(5), the testing requirement is changed to reference the principal lending manager exam. The requirement of obtaining a minimum score of 85% is eliminated.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The costs to the state of reviewing an application for instructor certification will not change.

◆ **LOCAL GOVERNMENTS:** Local governments do not certify as prelicensing instructors, nor do they review

certification applications. No impact to local governments is anticipated.

◆ **SMALL BUSINESSES:** Small businesses offering prelicensing education will have to ensure that any instructors applying for certification (from the effective date of this rule forward) pass the principal lending manager exam. Currently, the cost of the exam is \$59. The cost of the mortgage loan originator exam, which is required under the rule as currently in effect, is \$69. Therefore, a person who is pursuing instructor certification without simultaneously seeking licensure as a mortgage loan originator will experience a savings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** A person who wishes to teach prelicensing education (from the effective date of this rule forward) will have to pass the principal lending manager exam. Currently, the cost of the exam is \$59. The cost of the mortgage loan originator exam, which is required under the rule as currently in effect, is \$69. Therefore, a person who is pursuing instructor certification without simultaneously seeking licensure as a mortgage loan originator will experience a savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: To comply, affected persons must pass the principal lending manager exam. The cost of this exam is \$59.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In order to better coordinate with the new federal law for mortgage licensees, this rule filing amends the examination requirement for certification as an instructor of prelicensing education, replacing the mortgage loan originator examination with the principal lending manager examination. No fiscal impact to businesses is anticipated other than a possible \$10 fee savings for applicants.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/16/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/23/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

R162-2c. Utah Residential Mortgage Practices and Licensing Rules.

R162-2c-203. Utah-Specific Education Certification.

- (1) School certification.
 - (a) A school offering Utah-specific education shall certify with the division before providing any instruction.
 - (b) To certify, a school applicant shall prepare and supply the following information to the division:
 - (i) contact information, including:
 - (A) name, phone number, and address of the physical facility;
 - (B) name, phone number, and address of any school director;
 - (C) name, phone number, and address of any school owner; and
 - (D) an e-mail address where correspondence will be received by the school;
 - (ii) evidence that all school directors and owners meet the moral character requirements outlined in R162-2c-202(1) and the competency requirements outlined in R162-2c-202(2);
 - (iii) school description, including:
 - (A) type of school; and
 - (B) description of the school's physical facilities;
 - (iv) list of courses offered;
 - (v) proof that each course has been certified by the division;
 - (vi) list of the instructor(s), including any guest lecturer(s), who will be teaching each course;
 - (vii) proof that each instructor:
 - (A) has been certified by the division;
 - (B) is qualified as a guest lecturer; or
 - (C) is exempt from certification under Subsection 203(5)
 - (f);
 - (viii) schedule of courses offered, including the days, times, and locations of classes;
 - (ix) statement of attendance requirements as provided to students;
 - (x) refund policy as provided to students;
 - (xi) disclaimer as provided to students; and
 - (xii) criminal history disclosure statement as provided to students.
- (c) Minimum standards.
 - (i) The course schedule may not provide or allow for more than eight credit hours per student per day.
 - (ii) The attendance statement shall require that each student attend at least 90% of the scheduled class time.
 - (iii) The disclaimer shall adhere to the following requirements:
 - (A) be typed in all capital letters at least 1/4 inch high; and
 - (B) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the mortgage entities that may be soliciting for licensees at this school."
 - (iv) The criminal history disclosure statement shall:
 - (A) be provided to students while they are still eligible for a full refund; and
 - (B) clearly inform the student that upon application with the nationwide database, the student will be required to:

(I) accurately disclose the student's criminal history according to the licensing questionnaire provided by the nationwide database and authorized by the division; and

(II) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;

(C) clearly inform the student that the division will consider the applicant's criminal history pursuant to R162-2c-202(1) in making a decision on the application; and

(D) include a section for the student's attestation that the student has read and understood the disclosure.

(d) Within 15 calendar days after the occurrence of any material change in the information outlined in Subsection (1), the school shall provide to the division written notice of that change.

(e) A school certification expires 24 months from the date of issuance and must be renewed before the expiration date in order for the school to remain in operation. To renew, a school applicant shall:

(i) complete a renewal application as provided by the division; and

(ii) pay a nonrefundable renewal fee.

(2) Utah-specific course certification.

(a) A school providing a Utah-specific course shall certify the course with the division before offering the course to students.

(b) Application shall be made at least 30 days prior to the date on which a course requiring certification is proposed to begin.

(c) To certify a course, a school applicant shall prepare and supply the following information:

(i) instruction method;

(ii) outline of the course, including:

(A) a list of subjects covered in the course;

(B) reference to the approved course outline for each subject covered;

(C) length of the course in terms of hours spent in classroom instruction;

(D) number of course hours allocated for each subject;

(E) at least three learning objectives for every hour of classroom time;

(F) instruction format for each subject; i.e, lecture or media presentation;

(G) name and credentials of any guest lecturer; and

(H) list of topic(s) and session(s) taught by any guest lecturer;

(iii) a list of the titles, authors, and publishers of all required textbooks;

(iv) copies of any workbook used in conjunction with a non-lecture method of instruction;

(v) the number of quizzes and examinations; and

(vi) the grading system, including methods of testing and standards of grading.

(d) Minimum standards.

(i) All texts, workbooks, supplement pamphlets and other materials shall be appropriate, current, accurate, and applicable to the required course outline.

(ii) The course shall cover all of the topics set forth in the associated outline.

(iii) The lecture method shall be used for at least 50% of course instruction unless the division gives special approval otherwise.

(iv) A school applicant that uses a non-lecture method for any portion of course instruction shall provide to the student:

(A) an accompanying workbook as approved by the division for the student to complete during the instruction; and

(B) a certified instructor available within 48 hours of the non-lecture instruction to answer student questions.

(v) The division shall not approve an online education course unless:

(A) there is a method to ensure that the enrolled student is the person who actually completes the course;

(B) the time spent in actual instruction is equivalent to the credit hours awarded for the course; and

(C) there is a method to ensure that the student comprehends the material.

(3) Course expiration and renewal.

(a) A certification for a 40-hour Utah-specific prelicensing course expires two years from the date of certification.

(b) As of January 1, 2010, a 20-hour Utah-specific prelicensing course certified by the division shall be deemed expired, regardless of any expiration date printed on the certification.

(c)(i) A division-approved continuing education course shall expire on whichever of the following occurs first:

(A) the expiration date printed on the certificate; or

(B) December 31, 2010.

(ii) To renew a division-approved continuing education course, a school applicant shall, within six months following the expiration date:

(A) complete a renewal form as provided by the division; and

(B) pay a nonrefundable renewal fee.

(iii) To certify a continuing education course that has been expired for more than six months, a school applicant shall resubmit it as if it were a new course.

(iv) After a continuing education course has been renewed three times, a school applicant shall submit it for certification as if it were a new course.

(d) The division shall cease reviewing and certifying courses for continuing education on December 30, 2010.

(e) As of January 1, 2011, any course offered for continuing education shall be approved through the nationwide database.

(4) Education committee.

(a) The commission may appoint an education committee to:

(i) assist the division and the commission in approving course topics; and

(ii) make recommendations to the division and the commission about:

(A) whether a particular course topic is relevant to residential mortgage principles and practices; and

(B) whether a particular course topic would tend to enhance the competency and professionalism of licensees.

(b) The division and the commission may accept or reject the education committee's recommendation on any course topic.

(5) Instructor certification.

(a) Except as provided in Subsection (f), an instructor shall certify with the division before teaching a Utah-specific course.

(b) Application shall be made at least 30 days prior to the date on which the instructor proposes to begin teaching.

(c) To certify as an instructor of mortgage loan originator prelicensing courses, an individual shall provide evidence of:

(i) a high school diploma or its equivalent;

(ii)(A) at least five years of experience in the residential mortgage industry within the past ten years; or

(B) successful completion of appropriate college-level courses specific to the topic proposed to be taught;

(iii)(A) a minimum of twelve months of full-time teaching experience;

(B) part-time teaching experience that equates to twelve months of full-time teaching experience; or

(C) participation in instructor development workshops totaling at least two days in length; and

(iv) having passed, within the six-month period preceding the date of application [~~and with a minimum score of 85%~~], the [~~state portion of the national~~] principal lending manager licensing examination.

(d) To certify as an instructor of PLM prelicensing courses, an individual shall:

(i) meet the general requirements of this Subsection 5(c); and

(ii) meet the specific requirements for any of the following courses the individual proposes to teach.

(A) Management of a Residential Mortgage Loan Office: at least two years practical experience in managing an office engaged in the business of residential mortgage loans.

(B) Mortgage Lending Law: two years practical experience in the field of real estate law; and either:

(I) current active membership in the Utah Bar Association; or

(II) degree from an American Bar Association accredited law school.

(C) Advanced Appraisal:

(I) at least two years practical experience in appraising; and

(II) current state-certified appraiser license.

(D) Advanced Finance:

(I) at least two years practical experience in real estate finance; and

(II) association with a lending institution as a loan originator.

(e) To certify as an instructor of continuing education courses, an individual shall demonstrate:

(i) knowledge of the subject matter of the course proposed to be taught, as evidenced by:

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

(B) a bachelor or higher degree in the field of real estate, business, law, finance, or other academic area directly related to the course; or

(C) a combination of experience and education acceptable to the division; and

(ii) ability to effectively communicate the subject matter, as evidenced by:

(A) a state teaching certificate;

(B) successful completion of college courses acceptable to the division in the field of education;

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

(D) other evidence acceptable to the division that the applicant has the ability to teach in schools, seminars, or equivalent settings.

(f) The following instructors are not required to be certified by the division:

(i) a guest lecturer who:

(A) is an expert in the field on which instruction is given;

(B) provides to the division a resume or similar documentation evidencing satisfactory knowledge, background, qualifications, and expertise; and

(C) teaches no more than 20% of the course hours;

(ii) a college or university faculty member who evidences academic training, industry experience, or other qualifications acceptable to the division;

(iii) an individual who:

(A) evidences academic training, industry experience, or other qualifications satisfactory to the division; and

(B) receives approval from the commission; and

(iv) a division employee.

(g) Renewal.

(i) An instructor certification for prelicensing education expires 24 months from the date of issuance and shall be renewed before the expiration date. To renew, an applicant shall submit to the division:

(A) evidence of having taught at least 20 hours of classroom instruction in a certified mortgage education course during the preceding two years;

(B) evidence of having attended an instructor development workshop sponsored by the division during the preceding two years; and

(C) a renewal fee as required by the division.

(ii) An instructor certification for division-approved continuing education expires 24 months from the date of issuance and shall be renewed before the expiration date. To renew, an applicant shall submit to the division:

(A) evidence of having taught at least one class in the subject area for which renewal is sought within the year preceding the date of application; or

(B)(I) written explanation for why the instructor has not taught a class in the subject area within the past year; and

(II) documentation to evidence that the applicant maintains the required expertise in the subject matter; and

(C) a renewal fee as required by the division.

(iii) An instructor certification issued by the division on or before December 31, 2010 for continuing education shall expire December 31, 2010.

(iv) The division shall cease certifying instructors for continuing education on December 30, 2010.

(v) As of January 1, 2011, any instructor proposing to teach a continuing education course shall certify through the nationwide database.

(h) Reinstatement.

(i) An instructor may reinstate an expired certification within 30 days of expiration by:

(A) complying with Subsection (g) as applicable to the type of course taught; and

(B) paying an additional non-refundable late fee.

(ii) Until six months following the date of expiration, an instructor may reinstate a certification that has been expired more than 30 days by:

(A) complying with Subsection (g) as applicable to the type of course taught;

(B) paying an additional non-refundable late fee; and

(C) completing six classroom hours of education related to residential mortgages or teaching techniques.

(6)(a) The division may monitor schools and instructors for:

(i) adherence to course content;

(ii) quality of instruction and instructional materials; and

(iii) fulfillment of affirmative duties as outlined in R162-2c-301(6)(a) and R162-2c-301(7)(a).

(b) To monitor schools and instructors, the division may:

(i) collect and review evaluation forms; or

(ii) assign an evaluator to attend a course and make a report to the division.

KEY: residential mortgage, loan origination, licensing, enforcement

Date of Enactment or Last Substantive Amendment: [April 12, 2010]

Authorizing, and Implemented or Interpreted Law: 61-2c-103(3)

**Commerce, Real Estate
R162-2c-402
Disciplinary Action**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 33792

FILED: 06/30/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed rule interprets Subsection 61-2c-402(4)(a), which allows the commission to convert a license revocation to a suspension.

SUMMARY OF THE RULE OR CHANGE: The commission may not convert a revocation that was based on a felony conviction involving fraud, misrepresentation, deceit or dishonesty, breach of trust, or money laundering, but may consider converting revocations based on other criminal history.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2c-103(3) and Subsection 61-2c-402(4)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The costs to the division of reviewing requests for conversion were contemplated by the legislature in passing H.B. 275. No additional costs are anticipated from this rule filing, which clarifies certain provisions of the statute. (DAR NOTE: H.B. 275 (2010) is found at Chapter 238, Laws of Utah 2010, and was effective 05/11/2010.)

◆ **LOCAL GOVERNMENTS:** Local governments do not deal with license revocations on any level. No impact to the budgets of local governments is anticipated.

◆ **SMALL BUSINESSES:** Any costs to small businesses of pursuing the conversion of a license revocation were considered by the legislature in passing H.B. 275. No additional costs are anticipated from this rule filing, which clarifies certain provisions of the statute.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Any costs to affected persons of pursuing the conversion of a license revocation were considered by the legislature in passing H.B. 275. No additional costs are anticipated from this rule filing, which clarifies certain provisions of the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Affected persons are those whose licenses have been revoked. This rule provides parameters within which the commission will review a request from such a person to convert a license revocation. As such, no compliance is required of affected persons; thus, no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing interprets a statutory provision that allows the Division to convert license revocations to license suspensions. No fiscal impact to businesses is anticipated beyond that considered by the Legislature in passing the H.B. 275.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/16/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/23/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

R162-2c. Utah Residential Mortgage Practices and Licensing Rules.

R162-2c-402. Disciplinary Action.

In reviewing a request to convert a revocation to a suspension pursuant to Section 61-2c-402(4)(a):

(1) The commission may not convert a revocation that was based on a felony conviction involving fraud, misrepresentation, deceit or dishonesty, breach of trust, or money laundering.

(2) The commission may consider converting a revocation that was based on other criminal history, including:

(a) a plea in abeyance, diversion agreement, or similar disposition of a felony charge; and

(b) a misdemeanor offense, regardless of the nature of the charge or the disposition of the case.

KEY: residential mortgage, loan origination, licensing, enforcement

Date of Enactment or Last Substantive Amendment: [~~April 12,~~ 2010

Authorizing, and Implemented or Interpreted Law: 61-2c-103(3); 61-2c-402(4)(a)

Environmental Quality, Environmental Response And Remediation

R311-501

Illegal Drug Operations Site Reporting and Decontamination Act, Contesting an Initial Order or Notice

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 33779

FILED: 06/22/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed because it is no longer necessary. The Department of Environmental Quality is currently developing comprehensive adjudicative rules that will apply to all of the Department's boards. Greater uniformity in procedures is desired for administrative convenience, particularly since the Uniform Environmental Quality Code was recently amended to require the appointment of an administrative law judge for board

adjudicative proceedings. If an adjudicative proceeding arises in the interim, the provisions in the Utah Administrative Procedures Act (UAPA) will be applied.

SUMMARY OF THE RULE OR CHANGE: The provisions of Rule R311-501 address the process to contest a decision by the Executive Secretary to deny an application submitted under Title 19, Chapter 6, Illegal Drug Operations Site Reporting and Decontamination Act, or revoke a Certificate issued under Section R311-500-6. The procedures to contest a decision by the Executive Secretary will be updated in new rules to be promulgated in the future. This rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-901 et seq.

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no anticipated fiscal impact to the state budget for repealing this rule.

♦ **LOCAL GOVERNMENTS:** There is no requirement for local government personnel to certify a Decontamination Specialist. There is no anticipated fiscal impact to local government by removing the rule.

♦ **SMALL BUSINESSES:** There is no anticipated fiscal impact on small business from repealing this rule.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated fiscal impact on persons other than small businesses, businesses, or local government entities as a result of repealing this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no change in compliance costs for affected persons from repealing this rule. A Certified Decontamination Specialist or individual applying for certification may be affected by the subject rule if they need to contest a decision to deny an application or revoke a Certificate previously issued by the Executive Secretary. However, the procedures outlined in UAPA and in the Environmental Quality Code will be followed until new rules are drafted.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rule R311-501 clarified the due process afforded an individual contesting a decision by the Executive Secretary to deny an application submitted under Title 19, Chapter 6, or revoke a Certificate issued under Section R311-500-6. It is believed that the fiscal impact to individuals and businesses from repealing this rule will be limited. Until new rules are adopted, Decontamination Specialists will be afforded due process by following the provisions of UAPA and the Environmental Quality Code. This together with current Rule R311-500 provide an important element of the Decontamination Specialist Certification Program and in conjunction with cleanup rules established by the Department of Health will provide a fully functioning drug lab cleanup program in Utah.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 ENVIRONMENTAL RESPONSE AND
 REMEDIATION
 FIRST FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Bill Rees by phone at 801-536-4167, by FAX at 801-536-4242, or by Internet E-mail at brees@utah.gov
 ♦ Karen Keller by phone at 801-536-4107, by FAX at 801-536-4242, or by Internet E-mail at karenkeller@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/16/2010

THIS RULE MAY BECOME EFFECTIVE ON: 09/16/2010

AUTHORIZED BY: Amanda Smith, Executive Director

R311. Environmental Quality, Environmental Response and Remediation.

~~**[R311-501. — Illegal Drug Operations Site Reporting and Decontamination Act, Contesting an Initial Order or Notice.**~~

~~**R311-501-1. Objective, Scope and Authority.**~~

~~_____ (a) Objective. The rules outline a process to contest a decision by the Executive Secretary to deny an application submitted under Title 19 Chapter 6, Illegal Drug Operations Site Reporting and Decontamination Act, or revoke a Certificate issued under R311-500-6.~~

~~_____ (b) Scope. These rules apply to proceedings under Title 19, Chapter 6, Illegal Drug Operations Site Reporting and Decontamination Act, Subsection 906(2) (Decontamination Specialist Certification and Revocation).~~

~~_____ (c) Authority. Section 19-6-906 directs the Department of Environmental Quality Solid and Hazardous Waste Control Board, in consultation with the Department of Health and local Health Departments, to make rules to establish within the Division of Environmental Response and Remediation:~~

~~_____ (1) certification standards for any private person, firm, or entity involved in the decontamination of contaminated property; and~~

~~_____ (2) a process for revoking the certification of a Decontamination Specialist who fails to maintain the certification standards.~~

~~**R311-501-2. — Orders, Notices and Other Decisions by the Executive Secretary.**~~

~~_____ (a) The initial order and notice described in R311-500-9 shall be issued by the Executive Secretary.~~

~~_____ (b) An initial order or notice shall become final in 30 days unless contested as described in R311-501-3. Failure to contest an initial order or notice waives any right of administrative review or judicial appeal.~~

~~**R311-501-3. Contesting an Initial Order or Notice Issued by the Executive Secretary.**~~

~~_____ (a) The validity of an initial order or notice described in R311-500-9 may be contested by filing a written Request for Agency Action with the Board:~~

~~_____ Solid and Hazardous Waste Control Board~~

~~_____ Division of Solid and Hazardous Waste~~

~~_____ 288 North 1460 West~~

~~_____ PO Box 144880~~

~~_____ Salt Lake City, Utah 84114-4880.~~

~~_____ (b) Any such request is governed by and shall comply with the requirements of Section 63-46b-3(3) of UAPA, and shall be received for filing within 30 days of the issuance of the Executive Secretary's order or notice.~~

~~_____ (c) Notice of the time and place for a hearing shall be provided in the response to a request for Agency Action, or shall be provided promptly after the hearing is scheduled.~~

~~_____ (d) A Request for Agency Action, and all subsequent proceedings acting on that request, are governed by UAPA~~

~~**R311-501-4. Parties and Intervention.**~~

~~_____ (a) The following persons are Parties to a proceeding governed by this Rule:~~

~~_____ (1) The person to whom an initial order or notice of violation is directed, such as a person who submitted a permit application that was approved or disapproved by order of the Executive Secretary;~~

~~_____ (2) The Executive Secretary; and~~

~~_____ (3) All persons whose legal rights or interests are substantially affected by the proceeding, who have standing to participate in the proceeding, and to whom intervention rights have been granted under R311-501-4 (d).~~

~~_____ (b) In a proceeding requested by the person to whom an initial order or notice of violation is directed, that person shall be the Petitioner and the Executive Secretary shall be the Respondent.~~

~~_____ (c) In a proceeding requested by a person requesting intervention, the Intervenor shall be the Petitioner, provided that Intervention is granted, and the Executive Secretary and the person to whom an initial order or notice of violation is directed shall be the Respondents.~~

~~_____ (d) A non-party may request intervention under Section 63-46b-9 of UAPA for the purpose of filing a Request for Agency Action, and may simultaneously file a Request for Agency Action. Requests for Intervention and Agency Action must be received by the Board for filing as provided in R311-501-3.2 within 30 days of the date of the challenged order or notice.~~

~~_____ (e) Any Party may, within 20 days or such earlier time as established by the Presiding Officer(s), respond to a Request for Intervention. The Chair of the Board may act as Presiding Officer for purposes of this paragraph.~~

~~**R311-501-5. Conduct of Proceedings.**~~

~~_____ (a) The Board is the "agency head" as that term is used in UAPA. The Board is also the "presiding officer," as that term is used in UAPA, except:~~

~~_____ (1) The Chair of the Board shall be considered the Presiding Officer to the extent that these rules allow; and~~

~~_____ (2) The Board may by order appoint a Presiding Officer to preside over all or a portion of the proceedings.~~

~~_____ (b) The Chair of the Board may delegate his/her authority as specified in this Rule to another Board member or Department employee.~~

~~_____ (c) Unless otherwise explicitly provided in an order of appointment, any appointment of a Presiding Officer or Presiding Officers shall be for the purpose of conducting all aspects of an adjudicative proceeding, except issuance of the final order. See also R311-501-7 regarding orders of Presiding Officers.~~

~~_____ (d) Proceedings pursuant to a Request for Agency Action shall be conducted formally if the Request for Agency Action is made to contest the validity of the following:~~

~~_____ (1) An order or notice revoking a certification;~~

~~_____ (2) A notice denying an application; or~~

~~_____ (3) A consent order.~~

~~_____ (e) The Board may convert proceedings, which are designated to be formal to informal, and proceedings, which are designated as informal to formal, if conversion is in the public interest and rights of all parties are not unfairly prejudiced. See Section 63-46b-4(3) of UAPA.~~

~~_____ (f) The Presiding Officer(s) may direct the Parties to appear at a specified time and place for a pre-hearing conference(s) for the purposes of clarifying the issues, simplifying the evidence, facilitating discovery, expediting proceedings, or encouraging settlement.~~

~~_____ (g) Unless otherwise directed by the Presiding Officer(s), parties to the proceeding may submit a pre-hearing brief at least five business days before the hearing. Post hearing briefs will be allowed only as authorized by the Board. Parties are not required to submit pre-hearing or post-hearing briefs unless directed to do so by the Presiding Officer(s). Pre-hearing and post-hearing briefs shall not exceed 15 pages unless otherwise provided by the Presiding Officer for all Parties.~~

~~_____ (1) Response briefs may not be filed unless permitted by the Presiding Officer(s).~~

~~_____ (h) Parties to a proceeding are encouraged to prepare a joint proposed schedule addressing the matters specified in subparagraph (i). If the parties cannot agree on a joint proposed schedule, the Presiding Officer(s) may consider proposals by any party.~~

~~_____ (i) The Presiding Officer(s) shall establish schedules for discovery and other pre-hearing proceedings, for the hearing, and for any post-hearing proceedings.~~

~~_____ (j) Except as otherwise provided by statute, the Presiding Officer(s) may approve extensions of time limits established by this rule, and may extend time limits adopted in schedules established under subparagraph (i). The Presiding Officer(s) may also postpone hearings. The Chair of the Board may act as Presiding Officer for purposes of this paragraph.~~

~~_____ (k) Time shall be computed as provided in Rule 6(a) of the Utah Rules of Civil Procedure. No additional time shall be allowed for service by mail.~~

~~_____ (l) All motions shall be filed a minimum of ten days before a scheduled hearing, unless otherwise allowed or required by the Presiding Officer(s). A memorandum in opposition to a motion may be filed within eight days of the filing of the motion, or at least one day before any scheduled hearing, whichever is earlier. Memoranda in support of or in opposition to motions may not exceed 15 pages unless otherwise provided by the Presiding Officer.~~

~~_____ (m) The original of any motion, brief, request for intervention, or other submission shall be filed with the Executive Secretary. In addition, the submitter shall provide a copy to each Presiding Officer and, through counsel of record if applicable, to each party.~~

R311-501-6. Hearings.

~~_____ (a) The Presiding Officer(s) shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony and cross-examination, and on the length of argument.~~

~~_____ (b) Unless otherwise directed by the Presiding Officer(s), the Petitioner shall present its case first, followed by the Executive Secretary, unless the Executive Secretary is the petitioner, and any other Parties. Rebuttal, if any, shall follow the same order.~~

~~_____ (c) If a party desires to employ a court reporter to make a record of the hearing, the original transcript of the hearing shall be filed with the presiding officer at no cost to the agency to enable the Presiding Officer to refer to the transcript in drafting the proposed order for the Board.~~

R311-501-7. Orders.

~~_____ (a) Unless otherwise directed by the Presiding Officer(s), each party may provide proposed orders for the Presiding Officer(s) within three days of the conclusion of the hearing.~~

~~_____ (b) A Presiding Officer or Presiding Officers appointed for the purpose of conducting all aspects of an adjudicative proceeding, except issuance of the final order, shall prepare a draft order. A copy of the draft order shall be provided to all Parties.~~

~~_____ (c) Any Party may, within 10 days of the date the draft order is mailed, delivered, or published, comment on the draft order. Such comments shall be limited to 15 pages, and shall cite to specific parts of the record, which support the comments.~~

~~_____ (d) The Board shall review the draft order, comments on the draft order, and those specific parts of the record cited by the Parties in any comments. The Board shall then determine whether to accept or modify the draft order, to remand the matter to an appointed Presiding Officer or Presiding Officers for further proceedings, or to act as Presiding Officers for further proceedings.~~

~~_____ (e) The Board may modify this procedure with notice to all Parties.~~

~~_____ (f) An order shall include the information required by Sections 63-46b-10 or 63-46b-5(1)(i) of UAPA.~~

R311-501-8. Stays of Orders.

~~_____ (a) A Party seeking a Stay of the Order of the Executive Secretary shall file a motion with the Presiding Officer(s). A Stay, if granted, would suspend the effect of the challenged Order.~~

~~_____ (b) The Presiding Officer(s) may order a stay of the Executive Secretary's Order if the Party seeking the Stay demonstrates that:~~

~~_____ (1) The Party seeking the Stay will suffer irreparable harm unless the stay issues;~~

~~_____ (2) The threatened injury to the Party seeking the Stay outweighs whatever damage the proposed stay is likely to cause the Party restrained or enjoined;~~

~~_____ (3) The Stay, if issued, would not be adverse to the public interest; and~~

~~_____ (4) There is substantial likelihood that the Party seeking the Stay will prevail on the merits of the underlying claim, or the ease presents serious issues on the merits which should be the subject of further evaluation by the Presiding Officer(s):~~

~~_____ (c) The Board as Presiding Officer may grant a stay of its order (or the Order of its appointed Presiding Officer) during the pendency of judicial review if the standards of R311-501-8(b) are met.~~

R311-501-9. Reconsideration:

~~_____ (a) No agency review under Section 63-46b-12 of UAPA is available. A Party may request reconsideration of an order of the Presiding Officer(s) as provided in Section 63-46b-13 of UAPA.~~

R311-501-10. Disqualification of Presiding Officer(s):

~~_____ (a) A member of the Board or other Presiding Officer shall disqualify him/herself from performing the functions of the Presiding Officer regarding any matter in which:~~

~~_____ (1) He/she, or his/her spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:~~

~~_____ (A) Is a party to the proceeding, or an officer, director, or trustee of a Party;~~

~~_____ (B) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented a Party concerning the matter in controversy;~~

~~_____ (C) Knows that he/she has a financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a Party to the proceeding;~~

~~_____ (D) Knows that he/she has any other interest that could be substantially affected by the outcome of the proceeding; or~~

~~_____ (E) Is likely to be a material witness in the proceeding.~~

~~_____ (b) The Presiding Officer is subject to disqualification under principles of due process and administrative law.~~

~~_____ (c) A motion for disqualification shall be made first to the Presiding Officer or Presiding Officers. If the Presiding Officer is or Presiding Officers are appointed, any determination of the Presiding Officer or Presiding Officers upon a motion for disqualification may be appealed to the Board.~~

~~_____ (a) Nothing in these rules shall prevent any person from requesting an opportunity to address the Board as a member of the public, rather than as a party. An opportunity to address the Board shall be granted at the discretion of the Board. However, addressing the Board in this manner does not constitute a request for agency action under R311-501-3.~~

~~_____ (a) Requests for records under the Utah Government Record Access and Management Act, Title 63, Chapter 2, Utah Code Ann., are not governed by R311-501. See R305-1, U.A.C.~~

KEY: meth lab certification revocation

Date of Enactment or Last Substantive Amendment: October 14, 2005

Authorizing, and Implemented or Interpreted Law: 19-6-901-et seq.]

**Health, Health Systems Improvement,
Licensing
R432-550
Birthing Centers (Five or Less Birth
Rooms)**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33788

FILED: 06/29/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The program rule and the construction rule that outline requirements for birthing centers in the state have a conflicting definition. The program rule defines birthing centers as "less than 5 birthing suites", and the construction rule defines it as "2 to 5 birthing suites". This rule change will align the two rules with the same definition. This change was recommended by the Health Facilities Committee and approved on 05/12/2010. This committee has representation from a broad cross section of the entities affected by this rule.

SUMMARY OF THE RULE OR CHANGE: Birthing centers in Utah that are less than two birthing suites have historically not been licensed as per the construction rule. The program rule change will now require at least two but not more than five birthing suites to be licensed, therefore making both rule requirements the same, and preserving the licensing exemption for only one birthing suite.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule change will have no effect on state budgets since the one birthing suite birthing centers have historically not been required to be licensed. There will be no change in practice.

◆ **LOCAL GOVERNMENTS:** This rule change will have no effect on local government budgets since the one birthing suite birthing centers have historically not been required to be licensed. There will be no change in practice.

◆ **SMALL BUSINESSES:** This rule change will have no effect on small business budgets since the one birthing suite birthing centers have historically not been required to be licensed. There will be no change in practice.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule change will have no effect on budgets since the one birthing suite birthing centers have historically not been required to be licensed. There will be no change in practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule change will have no effect on compliance costs since the one birthing suite birthing centers have historically not been required to be licensed. There will be no change in practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed change removes an inconsistent requirement from one rule and harmonizes practice with this rule. No fiscal impact expected.

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT, LICENSING
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
- ◆ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/16/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/23/2010

AUTHORIZED BY: David Sundwall, Executive Director

**R432. Health, Health Systems Improvement, Licensing.
R432-550. Birthing Centers [~~Five or Less Birth Rooms~~].
R432-550-1. Legal Authority.**

This rule is adopted pursuant to Title 26, Chapter 21.

R432-550-2. Purpose.

This rule provides health and safety standards for the organization, physical plant, maintenance and operation of birthing centers.

(1) Birthing centers [~~are restricted to five or fewer birth~~] shall consist of at least two, but not more than five birthing rooms.

(2) Birthing centers provide quality care and services in a pleasing and safe environment to a select low risk population of healthy maternal patients who choose a safe and cost-effective alternative to the traditional hospital childbirth experience.

(3) Birthing center clinical staff assess the maternal patient's risk for obstetric complications through careful prenatal screening for potential problems throughout pregnancy.

(4) Birthing centers recognize the individual needs of, and provide service to, low risk maternal patients expected to have an uncomplicated pregnancy, labor and delivery.

R432-550-3. Time for Compliance.

Facilities governed by these rules shall be in full compliance with these rules at the time of licensure.

R432-550-4. Definitions.

(1) Common definitions R432-1-3.

(2) Special Definitions:

(a) "Birth room" means a room and environment designed, equipped and arranged to provide for the care of a maternal patient and newborn and to accommodate a maternal patient's support person during the process of vaginal birth and recovery.

(b) "Birthing center" means a freestanding facility, receiving maternal patients and providing care during pregnancy, delivery and immediately after delivery.

(c) "Patient" means a woman or newborn receiving care and services provided by a birthing center during pregnancy, childbirth and recovery.

(d) "Clinical staff" means the physicians, certified nurse-midwives and other licensed health care practitioners appointed by the governing authority to practice within the birthing center and governed by rules approved by the governing body.

(e) "Support person" means the individual or individuals selected or chosen by a patient to provide emotional support and to assist her during the process of labor and childbirth.

(f) "Vaginal birth" means the three stages of labor.

R432-550-5. Licensure.

License Required. See R432-2.

R432-550-6. General Construction Rules.

See R432-14 Birthing Center Construction Rules.

R432-550-7. Governing Body.

(1) The licensee shall appoint in writing an individual or group to constitute the facility's governing body.

(2) The governing body shall:

(a) comply with federal, state and local laws, rules and regulations;

(b) adopt written policies and procedures which describe the functions and services of the birthing center and protect patient rights;

(c) adopt a policy prohibiting discrimination because of race, color, sex, religion, ancestry, or national origin in accordance with Sections 13-7-1 through 4.

(d) develop an organizational structure establishing lines of authority and responsibility;

(e) when the governing body is more than one individual, conduct meetings in accordance with facility policy, but at least annually, and maintain written minutes of the meetings;

(f) appoint by name and in writing a qualified administrator;

(g) appoint by name and in writing a qualified director of the clinical staff;

(h) notify the licensing agency in writing no later than five days after a change of administrator, identifying the name of the new administrator and the effective date of the change;

(i) appoint members of the clinical staff and delineate their clinical privileges;

(j) review and approve at least annually a quality assurance program for birthing center operation and patient care provided. R432-550-12.

(k) establish a system for financial management and accountability;

(l) provide for resources and equipment to provide a safe working environment for personnel;

(m) act on findings and recommendations of facility-created committees relevant to compliance with these birthing center rules;

(n) ensure that facility patient admission eligibility criteria are strictly applied by clinical staff and are evaluated through quality assurance review in accordance with R432-550-12.

(3) Written policies and procedures shall:

(a) clearly, accurately and comprehensively define the methods by which the facility will be operated to protect the health and safety of patients;

(b) provide for meeting the patient's needs;

(c) provide for continuous compliance with federal, state and local laws, rules and regulations.

(d) Written policies and procedures shall include:

(i) defining the term "low risk maternal patient" which shall include eligibility criteria for birth services offered in the birthing center;

(ii) defining specific criteria, which shall in normally anticipated circumstances render a maternal patient ineligible for birth services or continued care at the birthing center;

(iii) identifying and outlining methods for transferring patients who, during the course of pregnancy, labor or recovery, are determined to be ineligible for birthing center services or continued care at the birthing center;

(iv) planning for consultation, back-up services, transfer and transport of a newborn and maternal patient to a hospital where necessary care is available;

(v) documenting the maternal patient has been informed of the benefits, risks and eligibility requirements of an out-of-hospital birthing center labor and birth;

(vi) providing for the education of patients, family and support persons in postpartum and newborn care;

(vii) planning for post-discharge follow-up of patients;

(viii) registering birth, fetal death or death certificates in accordance with Sections 26-2-5, 26-2-13, 26-2-14, 26-2-23 and rules promulgated pursuant thereto in R436.

(ix) prescribing and instilling a prophylactic solution approved by the Department of Health in the eyes of the newborn in accordance with R386-702-7, Special Measures for the Control of Ophthalmia Neonatorum;

(x) performing phenylketonuria (PKU) and other metabolic disease tests in accordance with Department of Health Laboratory rules developed pursuant to Section 26-10-6;

(xi) providing for prenatal laboratory screening:

(A) blood type and Rh Factor and provision for appropriate use of Rh immunoglobulin;

(B) hematocrit or hemoglobin;

(C) antibody screen;

(D) rubella;

(E) syphilis;

(F) urine glucose and protein.

(xii) providing for infection control to include housekeeping; cleaning, sterilization, sanitization and storage of supplies and equipment; and prevention of transmission of infection in personnel, patients and visitors.

R432-550-8. Administrator.

(1) Direction.

(a) The administrator shall be responsible for the overall management and operation of the birthing center.

(b) The administrator shall designate in writing a competent employee to act as administrator in the temporary absence of the administrator.

(c) The administrator's designee shall have authority and responsibility to:

(i) act in the best interests of patient safety and well-being;

(ii) operate the facility in a manner which ensures compliance with these birthing center rules.

(2) Qualifications.

The administrator and administrator's designee shall be knowledgeable:

(a) by education, training or experience in administration and supervision of personnel and qualified as required by facility policy;

(b) in birthing center protocols;

(c) in applicable federal, state and local laws, rules and regulations.

(3) The administrator's responsibilities shall be included in a written job description available for Department review. The administrator shall:

(a) complete, submit and file records and reports required by the Department;

(b) develop and implement facility policies and procedures;

(c) review facility policies and procedures at least annually and report to the governing body on the review;

(d) employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority and who have the appropriate Utah license or certificate of completion;

(e) develop, for all employee positions, job descriptions that delineate functional responsibilities and authority;

(f) review and act on incident or accident reports.

R432-550-9. Clinical Director.

(1) The clinical director shall be responsible for implementing, coordinating and assuring the quality of patient care services.

(2) The clinical director shall:

(a) be currently licensed to practice medicine or midwifery in Utah;

(b) have training and expertise in obstetric and newborn services offered to ensure adequate supervision of patient care services.

(3) The clinical director's responsibilities shall be included in a written job description available for Department review. The clinical director shall:

(a) review and update facility protocols;

(b) review and evaluate clinical staff privileges and revise them as necessary;

(c) recommend, to the governing body, names of qualified licensed health care practitioners to perform approved procedures and the corresponding clinical staff privileges to be granted;

(d) coordinate, direct and evaluate clinical operations of the facility;

(e) evaluate and recommend to the administrator the type and amount of equipment needed in the facility;

(f) ensure that qualified staff are on the premises when patients are in the facility;

(g) ensure clinical staff documentation is recorded immediately and reflects a description of care given;

(h) ensure that planned birthing center services are within the scope of privileges granted to the clinical staff;

(i) recommend to the administrator appropriate remedial action and disciplinary action, when necessary, to correct violations of clinical protocols.

R432-550-10. Personnel.

(1) The administrator shall employ a sufficient number of qualified professional and support staff who are competent to perform their respective duties, services and functions.

(2) The facility shall maintain written personnel policies and procedures which shall be available to personnel and shall address the following:

(a) content of personnel records;

(b) job descriptions, qualifications and validation of licensure or certificates of completion as appropriate for the position held;

(c) conditions of employment;

(d) management of employees.

(3) The facility shall maintain personnel records for employees and shall retain personnel records for terminated employees for a minimum of one year following termination of employment.

(4) The facility shall establish a personnel health program through written personnel health policies and procedures which shall protect the health and safety of personnel and patients commensurate with the services offered.

(5) An employee placement health evaluation shall include a health inventory which shall be completed when an employee is hired. The health inventory shall obtain the employee's history of the following:

(a) conditions that predispose the employee to acquiring or transmitting infectious diseases;

(b) conditions which may prevent the employee from performing certain assigned duties satisfactorily.

(6) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-702, Code of Communicable Disease Rules.

(7) Employee skin testing by the Mantoux method shall be done annually or at the time of exposure and follow-up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(8) The birthing center shall provide staff development programs to include at least documented orientation for new staff and ongoing in-service training for personnel.

(a) Facility policy shall define an orientation program, standardized for employee categories of responsibility, and shall specify the time for completion.

(b) The in-service training program shall define the frequency and content of training to include:

(i) an annual review of facility policies and procedures;

(ii) infection control, personal hygiene and each employee's responsibility in the personnel health program.

(c) Personnel shall have ready access to the facility's policy and procedure manuals when on duty.

(9) Personnel shall maintain current licensing, certification or registration appropriate for the work performed and as required by the Utah Department of Commerce.

(a) Personnel shall provide evidence of current licensure, registration or certification to the Department upon request.

(b) Failure to ensure personnel are licensed, certified or registered may result in sanctions to the facility license.

R432-550-11. Contracts and Agreements.

(1) The licensee shall secure a written contract or agreement for services not provided directly by the facility. Contracts or agreements shall include a statement that contract personnel shall:

(a) perform according to facility policies and procedures;

(b) conform to standards required by laws, rules and regulations;

(c) provide services that meet professional standards and are timely.

(2) Contracts or transfer agreements shall be available for Department review.

(3) The licensee shall maintain transfer agreements for one or both of the following:

(a) admitting privileges for clinical staff at a general hospital within 30 minutes travel distance of the birthing center;

(b) a written transfer agreement with one or more general hospitals located within 30 minutes travel distance of the birthing center.

(4) The general hospital transfer agreement shall include provisions for:

(a) transfer of information needed for proper care and treatment of the individual transferred;

(b) security and accountability of the personal effects of the individual being transferred.

R432-550-12. Quality Assurance.

(1) The administrator shall establish a program to ensure quality in the operation of the birthing center and the services provided.

(2) The quality assurance program shall include a written organizational plan to identify and resolve problems.

(3) The quality of services offered by the facility shall be monitored by a quality assurance committee:

(a) The quality assurance committee shall include at least representatives from facility administration and clinical services and a knowledgeable person who is not an owner or employee of the birthing center.

(b) The quality assurance committee shall meet as prescribed in facility policy or at least quarterly and shall keep written minutes available for department review.

(c) The quality assurance committee shall initiate action to resolve identified quality assurance problems by filing a written report of findings and recommendations with the governing body and with the administrator and clinical director as necessary to produce desired results.

(4) The quality assurance program shall include surveillance, prevention and control of infection.

R432-550-13. Emergency and Disaster.

(1) The administrator shall make provisions to maintain a safe environment in the event of an emergency or disaster. An emergency or disaster includes but is not limited to utility interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic and injury.

(2) The administrator shall educate, train and drill staff to respond appropriately in an emergency in accordance with NFPA 101-31-4, Life Safety Code 1991.

(3) The administrator shall review the written emergency procedures at least annually and update them as appropriate.

(4) Personnel shall have ready access to written emergency and disaster plans when on duty.

(5) The administrator shall review the disaster plan with local disaster agencies as appropriate.

(6) The smoking policy shall comply with Title 26, Chapter 38, the "Utah Clean Air Act" and Section 31-4.4 of the Life Safety Code, 1991 edition.

R432-550-14. Patients' Rights.

Written patients' rights shall be established and made available to the patient as determined by facility policy which shall include the following:

(1) to be fully informed, prior to or at the time of admission, and during stay, of these rights and of facility rules that pertain to the patient;

(2) to be fully informed, prior to admission, of the treatment to be received, potential complications and expected outcomes;

(3) to refuse treatment to the extent permitted by law and to be informed of the medical consequences of such refusal;

(4) to be informed, prior to or at the time of admission and during stay, of services available in the facility and of any expected charges for which the patient may be liable;

(5) to be afforded the opportunity to participate in decisions involving personal health care, except when contraindicated;

(6) to refuse to participate in experimental research;

(7) to be ensured confidential treatment of personal and medical records and to approve or refuse release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or third party payment contract;

(8) to be treated with consideration, respect and full recognition of personal dignity and individuality, including privacy in treatment and in care for personal needs.

R432-550-15. Clinical Staff and Personnel.

(1) A physician applying for privileges at the birthing center must maintain admitting privileges at a general hospital within 30 minutes travel distance of the birthing center.

(2) A certified nurse-midwife applying for privileges must provide evidence of, and maintain, a collaborative relationship with a back-up physician to include at least a written and signed agreement approved by the clinical director. Written agreements a certified nurse-midwife establishes with a back-up physician shall include at least the following:

(a) documentation that the back-up physician agrees to accept consultation calls and referrals from the certified nurse-midwife 24 hours a day;

(b) documentation that the back-up physician has admitting privileges at a general acute hospital within 30 minutes travel distance of the birthing center;

(c) provisions to ensure adequate and timely services by the back-up physician.

(3) Information identifying current clinical staff, back-up physicians and on-call and emergency telephone numbers shall be readily available to birthing center personnel.

(4) Clinical staff and licensed personnel of the birthing center shall be trained in emergency and resuscitation measures for infants and adults, including but not limited to, cardiopulmonary resuscitation certification through an American Heart Association or American Red Cross approved course.

(5) A physician or certified nurse-midwife shall be present at each birth and remain until the maternal patient and newborn are stable postpartum.

(6) A second employee who is licensed or certified to give cardiopulmonary resuscitation shall be present at each birth.

(7) Clinical staff, licensed personnel and support staff shall be provided to meet patients' needs, to ensure patients' safety and to ensure that patients in active labor are attended.

R432-550-16. Clinical Staff.

(1) The attending member of the clinical staff shall ensure the supervision of, and quality of, care delivered to the patient admitted to the facility.

(2) Each patient shall be under the care of a member of the clinical staff.

(3) Clinical staff members shall comply with applicable professional practice laws and written birthing center protocols approved by the clinical director.

(4) The attending member of the clinical staff shall verify in writing that the patient conforms to facility eligibility criteria.

(5) The attending member of the clinical staff shall decide when transfer of a patient to a hospital is necessary and document in writing the conditions warranting the decision.

R432-550-17. Nursing Services.

(1) The birthing center shall provide nursing care services to meet the needs of the patients served.

(2) Licensed nursing service personnel shall plan and deliver nursing care as defined in written facility policy and in accordance with Title 58, Chapters 31b and 44a; and R156-31b and R156-44a; and other applicable laws and rules.

(3) The administrator shall employ sufficient licensed and auxiliary nursing staff to meet the total nursing needs of the patients.

R432-550-18. Equipment and Supplies.

(1) The administrator shall provide necessary equipment in good working order to meet the patient's needs.

(2) The type and amount of equipment shall be indicated in facility policy and approved by the clinical director.

(3) An emergency cart or tray equipped to allow completion of emergency procedures defined by facility policy shall be readily available.

(a) The facility shall safely store the emergency cart or tray in a designated area that is accessible to authorized personnel.

(b) The facility shall maintain a written log of all upkeep of the emergency cart or tray.

(4) The inventory of supplies shall be sufficient to care for the number of patients registered for care.

(5) Properly maintained equipment and supplies for the maternal patient and the newborn shall include at least the following:

- (a) furnishings suitable for labor, birth and recovery;
- (b) oxygen with flow meters and masks or equivalent;
- (c) mechanical suction and bulb suction;
- (d) resuscitation equipment to include resuscitation bags, laryngoscopes, endotracheal tubes and oral airways;
- (e) firm surfaces suitable for use in resuscitating patients;
- (f) emergency medications, intravenous fluids and related supplies and equipment;
- (g) fetal monitoring equipment, minimally to include a fetoscope or dopitone;
- (h) equipment to monitor and maintain the optimum body temperature of the newborn;
 - (i) a clock indicating hours, minutes and seconds;
 - (j) sterile suturing equipment and supplies;
 - (k) adjustable examination light;
 - (l) infant scale;
 - (m) a telephone or equivalent two-way communication device capable of reaching other facilities or emergency agencies;
 - (n) a delivery log for recording birth data.

R432-550-19. Pharmacy Service.

(1) The administrator shall provide documentation that facility pharmacy services comply with R156-17a, Board of Pharmacy Rules; Section 58-17a, Pharmacy Practice Act; Section 58-37, Controlled Substances Act; and with other applicable state and federal laws, rules and regulations.

(2) Licensed personnel shall prescribe order and administer medication in accordance with applicable professional practice acts, pharmacy and controlled substances laws.

R432-550-20. Anesthesia Services.

(1) The birthing center shall provide facilities and equipment for the provision of anesthesia services commensurate with the obstetric procedures planned for the facility.

(2) The clinical director shall ensure the safety of anesthesia services administered to patients by clinical staff through written policies and protocols approved by the clinical staff for anesthetic agents, delivery of anesthesia and potential hazards of anesthesia.

(a) Protocols for administration of anesthesia by a certified nurse-midwife shall be in accordance with R156-44a-102 and R156-44a-601.

(b) A clinical staff member shall monitor patients who receive anesthesia or analgesics.

R432-550-21. Laboratory and Radiology Services.

(1) The birthing center shall provide direct or contract laboratory, radiology and associated services according to facility policy and to meet the needs of patients.

(2) Laboratory and radiology reports or results shall be reported promptly to the attending clinical staff member and documented in the patient's medical record.

(3) Laboratory services shall be provided by a CLIA approved laboratory which meets requirements of R432-100-22. In-house laboratory facilities shall meet the requirements for laboratories in the construction portion of this rule.

(4) Radiology services shall comply with applicable sections of R313-16 Radiation Control and R432-100-21.

R432-550-22. Medical Records.

(1) Medical records shall be complete, accurately documented and systematically organized to facilitate retrieval and compilation of information.

(2) An employee designated by the administrator shall be responsible and accountable for the processing of medical records.

(3) The medical record and its contents shall be safeguarded from loss, defacement, tampering, fires and floods.

(4) Medical records shall be protected against access by unauthorized individuals.

(a) Medical record information shall be confidential.

(b) The birthing center may disclose medical record information only to authorized persons in accordance with federal, state and local laws.

(c) The birthing center shall obtain consent from the patient before releasing client information identifying the client, including photographs, unless release is otherwise allowed or required by law.

(5) Medical records shall be retained for at least five years after the last date of patient care. Records of minors, including records of newborn infants, shall be retained for three years after the minor reaches legal age under Utah law, but in no case less than five years.

(6) The birthing center shall maintain an individual medical record for each patient which shall include but is not limited to written documentation of the following:

(a) admission record with demographic information and patient identification data;

(b) history and physical examination which shall be up-to-date upon the patient's admission;

(c) written and signed informed consent;

(d) orders by a clinical staff member;

(e) record of assessments, plan of care and services provided;

(f) record of medications and treatments administered;

(g) laboratory and radiology reports;

(h) discharge summary for mother and newborn to include a note of condition, instructions given and referral as appropriate;

(i) prenatal care record containing at least prenatal blood serology, Rh factor determination, past obstetrical history and physical examination and documentation of fetal status;

- (j) monitoring of progress in labor with assessment of maternal and newborn reaction to the process of labor;
- (k) fetal monitoring record;
- (l) labor and delivery record, including type of delivery, record of anesthesia and operative procedures if any;
- (m) record of administration of Rh immune globulin;
- (n) documentation that the patient is informed of the statement of patient rights.

(7) The records of newborn infants shall include the following:

- (a) date and hour of birth, birth weight and length, period of gestation, sex and condition of infant on delivery including Apgar scores and resuscitative measures;
- (b) mother's name or unique identification;
- (c) record of ophthalmic prophylaxis;
- (d) identification number of the screening kit used to screen for metabolic diseases, documentation that metabolic screening was done and the genetic screening, PKU or other metabolic disorders report.

R432-550-23. Housekeeping Services.

- (1) The facility shall provide adequate housekeeping services to maintain a clean and sanitary environment.
- (2) The facility shall develop and implement written housekeeping policies and procedures.

R432-550-24. Laundry Services.

- (1) The facility shall develop and implement written policies and procedures for storage and processing of clean and soiled linen.
- (2) Clean linen shall be stored, handled and transported to prevent contamination. Linens shall be maintained in good repair and shall not be threadbare.
- (3) Soiled linen shall be handled, transported, stored and processed in a manner to prevent both leakage and the spread of infection.

R432-550-25. Maintenance, Physical Environment, and Safety.

- (1) The facility shall provide adequate maintenance service to ensure that facility equipment and grounds are maintained in a clean and sanitary condition and in good repair.
- (2) The facility shall develop and implement a written maintenance program which shall include a preventive maintenance schedule for major equipment and physical plant systems.

R432-550-26. General Maintenance.

- (1) The facility shall maintain facility buildings, fixtures, equipment and spaces in operable condition.
- (2) The facility shall provide a safe, clean and sanitary environment.
- (3) The facility shall conduct a pest-control program that ensures the facility is free from vermin.
- (4) Direct or contract pest-control programs shall comply with Title 4, Chapter 14.
- (5) Documentation shall be maintained for Department review.

R432-550-27. Waste Processing Service.

Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques acceptable to the Department of Environmental Quality, and the local health department having jurisdiction.

R432-550-28. Lighting.

The facility shall provide adequate and comfortable lighting to meet the needs of patients and personnel.

R432-550-29. Limitations of Services.

(1) Birthing center maternal patients shall be limited to women initially determined to be at low maternity risk and evaluated regularly throughout pregnancy to ensure they remain at low risk for a poor pregnancy outcome.

(2) Birthing center policy shall establish a written risk assessment system to assess the individual risk for each maternal patient.

(3) A clinical staff member shall perform and document a risk assessment for each maternal patient, which shall include evaluating the maternal patient for the criteria in R432-550-29(4) and facility policy.

(4) In order to be given care in a birth center a patient shall exhibit no evidence of the following:

- (a) severe anemia or blood dyscrasia;
- (b) insulin dependent diabetes mellitus;
- (c) symptomatic cardiovascular disease, including active thrombophlebitis;
- (d) compromised renal function;
- (e) substance abuse;
- (f) pregnancy-induced hypertension to include moderate to severe hypertension, preeclampsia and toxemia;
- (g) known or suspected active herpes genitalis;
- (h) viral infections during pregnancy known to adversely affect fetal well-being;
- (i) previous caesarean section, major uterine wall surgery or obstetrical complications likely to recur;
- (j) multiple gestation;
- (k) pre-term labor (37 weeks or less) or post-term gestation (43 weeks or greater);
- (l) prolonged rupture of membranes;
- (m) intrauterine growth retardation or macrosomia;
- (n) suspected serious congenital anomaly;
- (o) fetal presentation other than vertex;
- (p) oligohydramnios, polyhydramnios or chorioamnionitis;
- (q) abruptio placenta or placenta previa;
- (r) fetal distress which will be likely to adversely affect the infant in labor or at birth, including moderate to heavy meconium stained amniotic fluid;
- (s) need for anesthesia or analgesia other than those used in a setting where anesthesia and analgesia are limited in accordance with the facility's written protocols;
- (t) a desire for transfer from birthing center care;

(u) any condition identified intrapartum or postpartum which will be likely to adversely affect the health of the maternal patient or infant and will require management in a general hospital.

R432-550-30. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities

Date of Enactment or Last Substantive Amendment: ~~February 24, 1998~~ 2010

Notice of Continuation: October 4, 2007

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-16

Human Services, Administration R495-808 Fatality Review Act

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 33785

FILED: 06/28/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is being created to reflect changes to Utah statute per H.B. 86 from the 2010 Legislative General Session. The purpose of this rule is to clarify reporting and reviews of fatality reports for the Department of Human Services. (DAR NOTE: H.B. 86 (2010) is found at Chapter 239, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: The proposed rule adds reference to Subsection 62A-16-201(1) to designate who completes a Notification of Deceased Client Form. It also references Section 62A-16-101 which sets forth the legal criteria and requirement for a fatality review.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-1-111 and Section 62A-16-101 and Section 62A-16-201

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There will be no increase in costs or savings to the state budget because these proposed changes clarify practice, but do not increase the workload of reviews already being done.

♦ **LOCAL GOVERNMENTS:** There will be no increase in costs or savings to local government because they are not a

part of the state agency which is affected by this rule. The proposed rule clarifies work already being done by a state agency and local government is not responsible for fatality reviews.

♦ **SMALL BUSINESSES:** There will be no increase in costs or savings to small businesses because they are not a part of the state agency which is affected by this rule. The proposed rule clarifies work already being done by a state agency and small businesses are not responsible for fatality reviews.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no increase in costs or savings to other persons because they are not a part of the state agency which is affected by this rule. The proposed rule clarifies work already being done by a state agency and other persons are not responsible for fatality reviews.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no increase in costs or savings to affected persons because they are not a part of the state agency which is affected by this rule. The proposed rule clarifies work already being done by a state agency and affected persons are not responsible for fatality reviews.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no cost or savings on businesses associated with implementing this rule.

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

HUMAN SERVICES

ADMINISTRATION

120 N 200 W

SALT LAKE CITY, UT 84103-1500

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/16/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/23/2010

AUTHORIZED BY: Lisa-Michele Church, Executive Director

R495. Human Services, Administration.

R495-808. Fatality Review Act.

R495-808-1. Authority.

(1) The Department of Human Services is authorized to adopt, amend, and enforce rules as necessary in Section 62A-1-111.

(2) Sections 62A-16-101 through 62A-16-302 sets forth the legal criteria and requirements for Department of Human Services fatality reviews.

R495-808-2. Statement of Purpose.

(1) The purpose of this rule is to clarify reporting and reviews of fatality reports for the Department of Human Services.

R495-808-3. Completion of Deceased Client Reports.

(1) In accordance with Section 62A-16-201(1), the following employees are designated by the department to complete a Notification of Deceased Client Form: any worker, supervisor, or other Human Service Department employee who becomes aware of the death.

R495-808-4. Referral to Office of Child Protection Ombudsman.

(1) In the case of a child fatality, if the Fatality Review Coordinator or the Fatality Review Committee determines that there are policies or procedure issues that are not related to the death, or further case-specific information is needed, the case may be referred to the Office of the Child Protection Ombudsman (OCPO) for a full case review.

(2) Upon completion of the OCPO Case Review, the analyst will present the finding to the Fatality Review Committee for further review.

KEY: fatality review

Date of Enactment or Last Substantive Amendment: 2010

Authorizing, and Implemented or Interpreted Law: 62A-16-201; 62A-1-111; 62A-16-101; 62A-16-202; 62A-16-203; 62A-16-204; 62A-16-301; 62A-16-302

investigations are necessary and who will conduct the investigations. Procedures are clarified.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-1-110 and Section 62A-1-111 and Section 62A-1-115 and Section 62A-4A-101 and Section 62A-4a-202.5 and Section 62A-4a-202.6 and Section 62A-4a-409

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There will be no increase in costs or savings to the state budget because these proposed changes clarify practice, but do not increase the work already being accomplished by workers.

◆ LOCAL GOVERNMENTS: Local government is not a part of the state agency which is affected by this rule; therefore there will be no increase in costs or saving to local government. These proposed changes clarify practice for the state agency on work already being done and local government is not responsible for related parties investigations.

◆ SMALL BUSINESSES: Small businesses are not a part of the state agency which is affected by this rule; therefore there will be no increase in costs or saving to them. These proposed changes clarify practice for the state agency on work already being done and small businesses are not responsible for related parties investigations.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no costs or saving to any other persons or government entities because this rule does not apply to them. They are not a part of the state agency which is affected by this rule; therefore there will be no increase in costs or saving to other persons. These proposed changes clarify practice for the state agency on work already being done.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These proposed changes clarify practice for the state agency on work already being done. Affected persons have no compliance costs associated with implementing this rule because they are not part of the agency.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no costs or savings on businesses associated with implementing this rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
ADMINISTRATION
120 N 200 W
SALT LAKE CITY, UT 84103-1500
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

Human Services, Administration
R495-890

Department of Human Services
Related Parties Conflict Investigation
Procedure for Non Contracted Private
Sector Independent Child Protective
Services

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 33786

FILED: 06/28/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being proposed to reflect changes to Utah statute per H.B. 86 from the 2010 Legislative General Session. (DAR NOTE: H.B. 86 (2010) is found at Chapter 239, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: The rule establishes criteria used to determine when conflict

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/16/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/23/2010

AUTHORIZED BY: Lisa-Michele Church, Executive Director

R495. Human Services, Administration.

R495-890. Department of Human Services Related Parties Conflict Investigation Procedure for Non Contracted Private Sector Independent Child Protective Services.

R495-890-1. Authority.

(1) This rule is authorized by Sections 62A-1-110, 62A-1-111, 62A-4a-409.

R495-890-2. Definitions.

(1) The definitions contained in Title 62A apply. In addition, the following terms are defined for the purposes of this Rule:

(a) "Accepted referral" means a referral that has been screened by APS or DCFS intake and has met the agency's requirements for accepting a referral.

(b) "APS" means Adult Protective Services.

(c) "Case" means a referral that has been accepted for an investigation.

(d) "Child" means a person under eighteen years of age.

(e) "Client" means any person receiving services from DHS.

(f) "Conflict" means:

(i) There is a referral alleging child abuse, neglect or dependency and an employee, volunteer, board member, provider, or contractor of DHS has a relationship with the alleged victim, alleged perpetrator, or another person named in the investigation such that there is or might be a conflict of interest, the appearance of a conflict of interest, impropriety, or the appearance of impropriety if CPS or DCFS performed the investigation where a child is not in the custody of the Division of Child and Family Services; or

(ii) There is a referral alleging abuse, neglect or exploitation of a vulnerable adult, and an employee, volunteer, board member, provider, or contractor of DHS has a relationship with the alleged victim, alleged perpetrator, or another person named in the investigation such that there is or might be a conflict of interest, the appearance of a conflict of interest, impropriety, or the appearance of impropriety if APS or DAAS performed the investigation;

(iii) There is a referral alleging abuse, neglect or dependency of a minor that is in the custody and/or guardianship of DJJS or DSPD and the alleged perpetrator is an employee, volunteer, board member, provider, or contractor of DHS.

(g) "CPS" means Child Protective Services.

(h) "DHS" means the Department of Human Services, and includes all of the agencies and offices within the Department.

(i) "DCFS" means the Division of Child and Family Services, including its regional offices.

(j) "DAAS" means the Utah Division of Aging and Adult Services.

(k) "DJJS" means the Division of Juvenile Justice Services.

(l) "DJJS Investigator" means an employee of DJJS who conducts internal affairs investigations for DJJS.

(m) "DSPD" means the Division of Services for People with Disabilities.

(n) "Executive Director" is as defined in 62A-1-104 and includes the designee of the Executive Director.

(o) "Minor" means a child, or a person at least eighteen years of age and younger than twenty-one years of age who is in the custody and guardianship of the Division of Child and Family Services or the Division of Juvenile Justice Services.

(p) "OPG" means the Office of the Public Guardian.

(q) "OSR" means the Office of Services Review.

(r) "Reasonable Restraint" means: Justifiable restraint to protect the client or to protect others from the client's acts. Supported physical abuse does not include the use of reasonable and necessary physical restraint by an educator in accordance with Section 53A-11-802(2) or 76-2-401. Nor does it include conduct that constitutes the use of reasonable and necessary physical restraint or force in self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or other dangerous object in the client's possession or control, or to protect the client or another person from physical injury.

(i) In determining whether "reasonable restraint" was used in a department facility, the Related Party Conflict Investigator shall take into account the nature and purpose of the facility.

(s) "Referral" means information provided to DCFS intake alleging abuse, neglect, or dependency of a child, or to APS intake alleging abuse, neglect or exploitation of a vulnerable adult.

(t) "Related Party Conflict Case" means that a conflict has been identified, and the case has been referred to a Related Party Conflict Investigator for a related party conflict investigation where the child is not in the custody of the DCFS.

(u) "Related Parties Conflict Investigation" means the investigation of a conflict case by a Related Parties Conflict Investigator.

(v) "Related Parties Conflict Investigator" means an employee of DHS assigned to OSR to conduct related parties conflict investigations.

(w) "Secondary worker" means a DCFS employee or an APS employee assigned to a related parties conflict investigation to conduct limited casework activities requested by the Related Parties Conflict Investigator, including but not limited to the following: making priority face to face contact when the Related Parties Conflict Investigator is unable to do so; assisting with the removal of a child; booking the child into a shelter facility; and filing a petition for ongoing In-Home or Out-of-Home services.

(x) "USDC" means the Utah State Developmental Center.

(y) "USH" means the Utah State Hospital.

(z) "Vulnerable Adult" is the same as defined in 62A-3-301(28).

R495-890-3. Purpose.

(1) The purpose of this rule is to establish the criteria used to determine:

(a) when a related party investigation is necessary;

(b) how related party investigations will be conducted; and

(c) how on-going services will be provided to clients.

(2) It is the Department of Human Services' goal to avoid any impropriety or appearances of impropriety that may arise when a conflict exists and to ensure that investigations involving an employee, volunteer, board member, provider, or contractor of DHS are conducted fairly. Related party conflict investigations shall be conducted in a manner consistent with CPS and APS procedures and policies.

R495-890-4. Criteria Used to Determine When a Related Party Investigation Is Necessary.

(1) In general: OSR shall be notified that a potential conflict exists whenever:

(a) a referral has been accepted and a person's relationship with DHS may influence an investigation of abuse, neglect or dependency of a child, or abuse, neglect or exploitation of a vulnerable adult, or

(b) a conflict exists that may prevent the assigned agency from making an objective determination based on the facts of the case.

(c) an accepted referral alleges child abuse, neglect, or dependency by a DHS employee where the child is not in the custody of the DCFS.

(d) an accepted referral alleges child abuse, neglect or dependency by a professional partner of DCFS, including but not limited to: an Assistant Attorney General, a Guardian ad Litem, or a law enforcement officer who works directly with DCFS.

(e) an accepted referral alleges that a child has been abused and/or neglected while in the custody or guardianship of DJJS, while placed in the USH or USDC or while placed with a contracted provider of any of these agencies, and the alleged perpetrator is an employee, volunteer or board member with DHS, or a provider, or contractor of DCFS.

(f) an accepted referral alleges abuse, neglect, or exploitation of a vulnerable adult by a DHS employee.

(g) an accepted referral alleges that an adult has been abused, neglected or exploited while in the guardianship of OPG, placed at the USH or the USDC, or placed with a DHS contracted provider of any of these agencies, and the alleged perpetrator is an employee, volunteer, or board member of DHS, or a provider, or contractor of DAAS.

(2) The Executive Director of DHS may, at any time, designate a case a "related party conflict investigation" and direct that the case be assigned to a Related Party Conflict Investigator.

(3) If the conflict is identified after DCFS or APS has initiated an investigation, OSR shall be notified on the next business day after the conflict is identified. If the DCFS or APS worker is responding to an emergency or priority one call, the worker shall complete whatever protective actions are necessary and then staff the conflict with a supervisor.

R495-890-5. Procedure Used When a Related Party Investigation Is Necessary for Children.

(1) When a CPS intake worker identifies a potential conflict where the child is not in the custody of the DCFS, the intake worker shall staff the referral with the OSR Services Review Manager to determine if a conflict exists. The OSR Services Review Manager shall determine whether there is a conflict, and will notify the CPS Intake Worker of its decision.

(2) If a conflict is identified after the initial referral where the child is not in the custody of the DCFS, the assigned CPS worker and/or the CPS worker's supervisor shall notify the OSR Services Review Manager no later than the next business day after the conflict is identified.

(3) Once the accepted case is assigned to OSR, the case shall be assigned by OSR to a Related Party Conflicts Investigator, and the investigation activities from that point forward shall be supervised by the OSR Services Review Manager.

(4) A Related Party Conflict Investigator shall have training that is substantially similar to the training received by CPS workers.

(5) Related Parties Conflict Investigators have the same rights, duties, and authority to investigate referrals as CPS workers.

(6) The following duties are to remain the duties of CPS Intake: receipt of the referral; research; disposition of the referral; establish priority of the referral; and, establish allegation categories.

(7) DCFS shall review unaccepted Related Parties referrals in accordance with DCFS Practice Guidelines.

(8) A DCFS investigator may act as a secondary worker and assist the Related Parties Conflict Investigator.

(9) The Related Party Conflict Investigator shall determine whether the allegations are supported, unsupported, without merit, or false. The Related Parties Conflict Investigator shall report its findings to the appropriate DCFS employee to ensure that the findings are entered into the Licensing or Management Information System and that the appropriate Notices of Agency Action are issued.

(10) If the OSR Services Review Manager determines that no conflict exists, the case shall be referred back to CPS intake for investigation by DCFS.

(11) If the Executive Director has designated a case as a related party conflict case, the OSR Services Review Manager shall assign the case to a Related Parties Conflict Investigator.

R495-890-6. Procedure Used When a Related Party Investigation Is Necessary for Adults.

(1) Allegations of abuse, neglect, or exploitation of a vulnerable adult shall be referred to APS Intake.

(2) If APS Intake accepts the referral and identifies a potential conflict, the Intake worker shall staff the referral with the OSR Services Review Manager to determine if a conflict exists.

(3) The OSR Services Review Manager shall determine whether there is a conflict and will notify APS intake of its decision.

(4) In cases where a conflict exists, the OSR Services Review Manager shall accept the case, and assign the case to a Related Parties Conflict Investigator.

(5) A Related Parties Conflict Investigator shall have training that is substantially similar to the training received by APS investigators.

(6) Related Parties Conflict Investigators have the same rights, duties, and authority to investigate referrals as APS investigators and shall perform its investigation using the same policies, procedures, rules and laws that apply to APS investigations.

(7) An APS investigator may act as a secondary worker and assist the Related Parties Conflict Investigator.

(8) The Related Party Conflict Investigator shall determine whether the referral is supported, inconclusive or without

merit. OSR will work with DAAS to ensure that the investigative finding is entered into the Statewide Database created in Section 62A-3-311.1, and that the appropriate Notices of Agency Action are issued.

(9) If the OSR Services Review Manager determines that no conflict exists, the case shall be referred back to APS intake for investigation by APS.

(10) If the Executive Director has designated a case as a related party conflict case, the OSR Services Review Manager shall assign the case to a Related Parties Conflict Investigator.

R495-890-7. Special Procedures for Related Parties Conflict Investigations.

(1) Nothing in this rule is intended to limit an agency's ability to conduct its own internal investigation of any incident that occurs in a facility or by an employee during working hours.

(2) The related parties' conflict investigation is meant to determine whether abuse, neglect or dependency of a child, or abuse, neglect or exploitation of an adult occurred. If, during the course of the investigation, the Related Parties Conflict Investigator believes that a separate investigation into policy or personnel matters is warranted, the Related Parties Conflict Investigator may notify the agency of its concerns.

(3) A Related Parties Conflict Investigator may determine that a person was not abused or neglected if reasonable restraint was used in a DJJS facility, the USH, the USDC, or other contracted facility or program of DJJS or DSPD.

(4) The Related Parties Conflict Investigator may notify the agency of the initiation of an investigation and/or the conclusion of an investigation.

KEY: related parties, investigations, conflict

Date of Enactment or Last Substantive Amendment: 2010

Authorizing Implemented or Interpreted Law: 62A-1-110; 62A-1-111; 62A-1-115; 62A-4A-101; 62A-4a-202.6; 62A-4a-409

Public Safety, Administration
R698-6

Honoring Heroes Restricted Account

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 33789

FILED: 06/29/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish procedures by which an organization may apply to the Department of Public Safety to receive funds from the Honoring Heroes Restricted Account.

SUMMARY OF THE RULE OR CHANGE: This rule outlines the procedures by which an organization may apply to the Department of Public Safety to receive funds from the Honoring Heroes Restricted Account.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53-1-118(8)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There is no cost impact to the state budget because the rule clarifies only how organizations may apply for funds.

◆ LOCAL GOVERNMENTS: There is no cost impact to local governments because the rule clarifies only how organizations may apply for funds.

◆ SMALL BUSINESSES: There is no cost impact to small businesses because the rule clarifies only how organizations may apply for funds.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no cost impact to persons because the rule clarifies only how organizations may apply for funds.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs as the rule only clarifies how organizations may apply for funds.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule would have no fiscal impact on local businesses. Monies obtained are from the sale of Honoring Heroes Foundation license plates. The account is restricted and only qualifying agencies/organizations may apply to receive funds.

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

PUBLIC SAFETY
ADMINISTRATION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 1ST FLR
SALT LAKE CITY, UT 84119-5994
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Letisha Garrick by phone at 801-965-4062, by FAX at 801-965-4608, or by Internet E-mail at letishagarrick@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/16/2010

THIS RULE MAY BECOME EFFECTIVE ON: 09/01/2010

AUTHORIZED BY: Lance Davenport, Commissioner

R698. Public Safety, Administration.**R698-6. Honoring Heroes Restricted Account.****R698-6-1. Purpose.**

The purpose of this rule is to establish procedures by which an organization may apply to the department to receive funds under Section 53-1-118.

R698-6-2. Authority.

This rule is authorized by Section 53-1-118(8) which provides that the commissioner shall make rules regarding the procedures to be used to obtain funds from the account.

R698-6-3. Definitions.

(1) The terms used in this rule are defined in Section 53-1-102.

(2) In addition:

(a) "awarded funds" means the funds appropriated by the department from the account;

(b) "restricted funds" means the funds appropriated to the department from the account;

(c) "the account" means the Public Safety Honoring Heroes Restricted Account; and

(d) "UHP" means the Utah Highway Patrol.

R698-6-4. Application Process.

(1) An organizations that wishes to receive awarded funds must submit an application to the commissioner.

(2) The application must contain the following:

(a) verification that the organization is a charitable organization that qualifies for tax exempt status under Internal Revenue Code Section 501(c)(3);

(b) a statement indicating that a primary part of the organization's mission is to support the families of fallen UHP troopers or other department employees;

(c) a detailed description of how the organization intends to spend the awarded funds to support the families of fallen UHP troopers and other department employees; and

(d) documentation of how the organization spent any awarded funds that were previously appropriated to the organization.

(3)(a) All applications must be submitted before July 1 in order to be eligible for awarded funds from the current fiscal year.

(b) If no applications are received by July 1, the award funds shall remain in the account until the next fiscal year.

R698-6-5. Distributions and Prioritization of Awards.

(1) The commissioner shall review any applications that have been submitted and determine which organization will receive awarded funds based upon the following criteria:

(a) which organization's intended use of the awarded funds will have the broadest application or meet the greatest need; and

(b) whether the organization used previously awarded funds in the manner for which they originally sought the funds.

(2) The commissioner shall distribute all restricted funds in the account each year to one or more qualified organizations.

KEY: Honoring Heroes Restricted Account

Date of Enactment or Last Substantive Amendment: 2010

Authorizing, and Implemented or Interpreted Law: 53-1-118(8)

Tax Commission, Property Tax
R884-24P-33
2010 Personal Property Valuation
Guides and Schedules Pursuant to
Utah Code Ann. Section 59-2-301

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33794

FILED: 06/30/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The valuation guides and schedules contained in this rule are reviewed and updated annually by the Property Tax Division. The personal property guides and schedules are used for local property tax valuation and assessment of business personal property and certain motor vehicles by county assessors.

SUMMARY OF THE RULE OR CHANGE: Section 59-2-107 authorizes the State Tax Commission to promulgate rules that define classes of items considered to be personal property and provide valuation percent good schedules to value locally assessed personal property. County assessors must use the percent good schedules as contained in this rule. Any deviation which affects an entire class or type of personal property requires a written report documenting the schedule change to be submitted to the Tax Commission for approval prior to use.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-2-301

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amount of savings or cost to state government is not affected by this rule. Tax revenue generated by taxing personal property is distributed to local governments to finance public services, programs, school districts, and local districts. No tax revenues generated by taxation of personal property will be retained by state government.

◆ **LOCAL GOVERNMENTS:** The amount of saving or cost to local government is undetermined. Local governmental entities receive tax revenue based on increased or decreased

personal property values and the change in the annual property tax rate. Increases or decreases in 2011 property tax revenue cannot be determined, even if there were no changes in the percent good tables, because taxpayer acquisitions and deletions of personal property during 2011 are unknown. The proposed personal property schedules in Section R884-24P-33 are raised, lowered, or remain the same for 2011 based upon the type and age of the personal property assessed. Schedules for classes 12, 15, 24, and 27 are proposed with no changes for 2011. Schedules used to value business personal property increase or decrease based upon the calculation of economic trends from cost indexes published by the Marshall Valuation Service. Generally, these cost indexes indicate a sharp decline due to a depressed economy. Thus, most proposed personal property schedules reflect a reduction from 2010. In aggregate, for all personal property schedules, it is anticipated that the change in the annual property tax rate will have a larger impact on revenue than will the proposed schedule changes in Section R884-24P-33.

♦ **SMALL BUSINESSES:** In the aggregate, the amount of savings or cost to individuals and business is undetermined. Affected persons pay property taxes based on increased or decreased personal property values and the change in the annual property tax rate. The proposed personal property schedules in Section R884-24P-33 are raised, lowered, or remain the same for 2011 based upon the type and age of the property. Since some schedules are increased and some decreased, it is not possible to determine the change to affected persons without knowing the 2011 personal property mix compared to the previous year.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** In the aggregate, the amount of savings or cost to individuals and business is undetermined. Affected persons pay property taxes based on increased or decreased personal property values and the change in the annual property tax rate. The proposed personal property schedules in Section R884-24P-33 are raised, lowered, or remain the same for 2011 based upon the type and age of the property. Since some schedules are increased and some decreased, it is not possible to determine the change to affected persons without knowing the 2011 personal property mix compared to the previous year.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Local business owners and property tax practitioners will once again be required to be aware of new percent good figures. This is an annual occurrence; therefore, the compliance cost in completing the assessment process will not change. The change in taxes charged for these businesses depend entirely on the owner's mix of personal property since some percent good schedules are increasing and others decreasing. For example, the owner of a business may discard some personal property items and add new equipment or replace equipment which may increase or decrease personal property values. In addition, the personal property percent good schedule percentages often change from the previous year due to current economic conditions.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As indicated above, the fiscal impact to businesses from changes in the proposed personal property schedules due to changes in Section R884-24P-33 will not be as significant as changes in the annual property tax rate.

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

TAX COMMISSION
PROPERTY TAX
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Michael Cragun by phone at 801-297-3907, by FAX at 801-297-3919, or by Internet E-mail at mcragun@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/16/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/23/2010

AUTHORIZED BY: R. Bruce Johnson, Tax Commission Chair

R884. Tax Commission, Property Tax.

R884-24P. Property Tax.

R884-24P-33. [2010]2011 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

(1) Definitions.

(a)(i) "Acquisition cost" does not include indirect costs such as debugging, licensing fees and permits, insurance, or security.

(ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

(b)(i) "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(c) "Cost new" means the actual cost of the property when purchased new.

(i) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

(A) documented actual cost of the new or used vehicle; or

(B) recognized publications that provide a method for approximating cost new for new or used vehicles.

(ii) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

(A) class 6 heavy and medium duty trucks;

(B) class 13 heavy equipment;

(C) class 14 motor homes;

(D) class 17 vessels equal to or greater than 31 feet in length; and

(E) class 21 commercial trailers.

(d) For purposes of Sections 59-2-108 and 59-2-1115, "item of taxable tangible personal property" means a piece of equipment, machinery, furniture, or other piece of tangible personal property that is functioning at its highest and best use for the purpose it was designed and constructed and is generally capable of performing that function without being combined with other items of personal property. An item of taxable tangible personal property is not an individual component part of a piece of machinery or equipment, but the piece of machinery or equipment. For example, a fully functioning computer is an item of taxable tangible personal property, but the motherboard, hard drive, tower, or sound card are not.

(e) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

(i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

(ii) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Penton Price Digests.

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

(c) County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

(3) The provisions of this rule do not apply to:

(a) a vehicle subject to the age-based uniform fee under Section 59-2-405.1;

(b) the following personal property subject to the age-based uniform fee under Section 59-2-405.2:

(i) an all-terrain vehicle;

(ii) a camper;

(iii) an other motorcycle;

(iv) an other trailer;

(v) a personal watercraft;

(vi) a small motor vehicle;

(vii) a snowmobile;

(viii) a street motorcycle;

(ix) a tent trailer;

(x) a travel trailer; and

(xi) a vessel, including an outboard motor of the vessel, that is less than 31 feet in length and

(c) an aircraft subject to the uniform statewide fee under Section 59-2-404.

(4) Other taxable personal property that is not included in the listed classes includes:

(a) Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

(b) Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

(c) Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

(5) Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

(6) All taxable personal property, other than personal property subject to an age-based uniform fee under Section 59-2-405.1 or 59-2-405.2, or a uniform statewide fee under Section 59-2-404, is classified by expected economic life as follows:

(a) Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

(i) Examples of property in the class include:

(A) barricades/warning signs;

(B) library materials;

(C) patterns, jigs and dies;

(D) pots, pans, and utensils;

(E) canned computer software;

(F) hotel linen;

(G) wood and pallets;

(H) video tapes, compact discs, and DVDs; and

(I) uniforms.

(ii) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:

(A) retail price of the canned computer software;

(B) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or

(C) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.

(iv) Video tapes, compact discs, and DVDs are valued at \$15.00 per tape or disc for the first year and \$3.00 per tape or disc thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
[09]10	68%
[08]09	[41%]38%
[07]08 and prior	[11%]10%

(b) Class 2 - Computer Integrated Machinery.

(i) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:

(A) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(B) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(C) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(D) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(E) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

(ii) Examples of property in this class include:

(A) CNC mills;

(B) CNC lathes;

(C) high-tech medical and dental equipment such as MRI equipment, CAT scanners, and mammography units.

(iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
[09]10	[87%]86%
[08]09	[81%]74%
[07]08	[71%]67%
[06]07	[63%]58%
[05]06	[53%]49%
[04]05	[43%]38%
[03]04	[29%]28%
[02]03 and prior	[15%]14%

(c) Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

(i) Examples of property in this class include:

(A) office machines;

(B) alarm systems;

(C) shopping carts;

(D) ATM machines;

(E) small equipment rentals;

(F) rent-to-own merchandise;

(G) telephone equipment and systems;

(H) music systems;

(I) vending machines;

(J) video game machines; and

(K) cash registers and point of sale equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
[09]10	81%
[08]09	[69%]63%
[07]08	[54%]50%
[06]07	[38%]35%
[05]06 and prior	[20%]18%

(d) Class 4 Short Life Expensed Property.

(i) Property shall be classified as short life expensed property if all of the following conditions are met:

(A) the property is an item of taxable tangible personal property with an acquisition cost of \$1,000 or less;

(B) the property is the same type as the following personal property:

(I) short life property;

(II) short life trade fixtures; or

(III) computer hardware; and

(C) the owner of the property elects to have the property assessed as short life expensed property.

(ii) Examples of property in this class include:

(A) short life property defined in Class 1;

(B) short life trade fixtures defined in Class 3 ; and

(C) computer hardware defined in Class 12.

(iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 4

Year of Acquisition	Percent Good of Acquisition Cost
[09]10	[67%]66%
[08]09	[51%]50%
[07]08	30%
[06]07	[16%]15%
[05]06	10%

(e) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

(i) Examples of property in this class include:

(A) furniture;

(B) bars and sinks;

(C) booths, tables and chairs;

(D) beauty and barber shop fixtures;

(E) cabinets and shelves;

(F) displays, cases and racks;

(G) office furniture;

(H) theater seats;

(I) water slides; and

(J) signs, mechanical and electrical.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
[09]10	[88%] 87%
[08]09	[83%] 76%
[07]08	[75%] 70%
[06]07	[68%] 62%
[05]06	[59%] 55%
[04]05	[51%] 46%
[03]04	[39%] 37%
[02]03	[26%] 25%
[01]02 and prior	13%

(f) Class 6 - Heavy and Medium Duty Trucks.

(i) Examples of property in this class include:

- (A) heavy duty trucks;
- (B) medium duty trucks;
- (C) crane trucks;
- (D) concrete pump trucks; and
- (E) trucks with well-boring rigs.

(ii) Taxable value is calculated by applying the percent good factor against the cost new.

(iii) Cost new of vehicles in this class is defined as follows:

- (A) the documented actual cost of the vehicle for new vehicles; or
- (B) 75 percent of the manufacturer's suggested retail price.

(iv) For state assessed vehicles, cost new shall include the value of attached equipment.

(v) The [2010]2011 percent good applies to [2010]2011 models purchased in [2009]2010.

(vi) Trucks weighing two tons or more have a residual taxable value of \$1,750.

TABLE 6

Model Year	Percent Good of Cost New
[10]11	90%
[09]10	[79%] 75%
[08]09	[73%] 69%
[07]08	[67%] 63%
[06]07	[61%] 57%
[05]06	[55%] 52%
[04]05	[49%] 46%
[03]04	[43%] 40%
[02]03	[37%] 34%
[01]02	[31%] 28%
[00]01	[25%] 23%
[99]00	[19%] 17%
[98]99	[13%] 11%
[97]98 and prior	[7%] 5%

(g) Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.

(i) Examples of property in this class include:

- (A) medical and dental equipment and instruments;
- (B) exam tables and chairs;
- (C) microscopes; and
- (D) optical equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 7

Year of Acquisition	Percent Good of Acquisition Cost
[09]10	89%
[08]09	[86%] 79%
[07]08	[80%] 75%
[06]07	[76%] 69%
[05]06	[69%] 64%
[04]05	[64%] 58%
[03]04	[54%] 52%
[02]03	[44%] 42%
[01]02	[33%] 32%
[00]01	[22%] 21%
[99]00 and prior	11%

(h) Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

(i) Examples of property in this class include:

- (A) manufacturing machinery;
- (B) amusement rides;
- (C) bakery equipment;
- (D) distillery equipment;
- (E) refrigeration equipment;
- (F) laundry and dry cleaning equipment;
- (G) machine shop equipment;
- (H) processing equipment;
- (I) auto service and repair equipment;
- (J) mining equipment;
- (K) ski lift machinery;
- (L) printing equipment;
- (M) bottling or cannery equipment;
- (N) packaging equipment; and
- (O) pollution control equipment.

(ii) Except as provided in Subsection (6)(g)(iii), taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) (A) Notwithstanding Subsection (6)(g)(ii), the taxable value of the following oil refinery pollution control equipment required by the federal Clean Air Act shall be calculated pursuant to Subsection (6)(g)(iii)(B):

- (I) VGO (Vacuum Gas Oil) reactor;
- (II) HDS (Diesel Hydrotreater) reactor;
- (III) VGO compressor;
- (IV) VGO furnace;
- (V) VGO and HDS high pressure exchangers;
- (VI) VGO, SRU (Sulfur Recovery Unit), SWS (Sour Water Stripper), and TGU; (Tail Gas Unit) low pressure exchangers;
- (VII) VGO, amine, SWS, and HDS separators and drums;
- (VIII) VGO and tank pumps;
- (IX) TGU modules; and
- (X) VGO tank and air coolers.

(B) The taxable value of the oil refinery pollution control equipment described in Subsection (6)(g)(iii)(A) shall be calculated by:

- (I) applying the percent good factor in Table 8 against the acquisition cost of the property; and
- (II) multiplying the product described in Subsection (6) (g)(iii)(B)(I) by 50%.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
[09]10	89%
[08]09	[86%]79%
[07]08	[80%]75%
[06]07	[76%]69%
[05]06	[69%]64%
[04]05	[64%]58%
[03]04	[54%]52%
[02]03	[44%]42%
[01]02	[33%]32%
[00]01	[22%]21%
[99]00 and prior	11%

(i) Class 9 - Off-Highway Vehicles.

(i) Because Section 59-2-405.2 subjects off-highway vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(j) Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
[09]10	91%
[08]09	[90%]82%
[07]08	[86%]80%
[06]07	[83%]76%
[05]06	[79%]74%
[04]05	[77%]69%
[03]04	[69%]66%
[02]03	[62%]59%
[01]02	[53%]51%
[00]01	[45%]43%
[99]00	[36%]35%
[98]99	[27%]26%
[97]98	18%
[96]97 and prior	9%

(k) Class 11 - Street Motorcycles.

(i) Because Section 59-2-405.2 subjects street motorcycles to an age-based uniform fee, a percent good schedule is not necessary.

(l) Class 12 - Computer Hardware.

(i) Examples of property in this class include:

- (A) data processing equipment;
- (B) personal computers;
- (C) main frame computers;
- (D) computer equipment peripherals;
- (E) cad/cam systems; and
- (F) copiers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Acquisition	Percent Good of Acquisition Cost
[09]10	62%
[08]09	46%
[07]08	21%
[06]07	9%
[05]06 and prior	7%

(m) Class 13 - Heavy Equipment.

(i) Examples of property in this class include:

- (A) construction equipment;
- (B) excavation equipment;
- (C) loaders;
- (D) batch plants;
- (E) snow cats; and
- (F) pavement sweepers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) [2010]2011 model equipment purchased in [2009]2010 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
[09]10	[56%]53%
[08]09	[53%]50%
[07]08	[50%]47%
[06]07	[46%]43%
[05]06	[43%]40%
[04]05	[40%]37%
[03]04	[37%]34%
[02]03	[33%]31%
[01]02	[30%]28%
[00]01	[27%]25%
[99]00	[24%]22%
[98]99	[20%]18%
[97]98	[17%]15%
[96]97 and prior	[14%]12%

(n) Class 14 - Motor Homes.

(i) Taxable value is calculated by applying the percent good against the cost new.

(ii) The [2010]2011 percent good applies to [2010]2011 models purchased in [2009]2010.

(iii) Motor homes have a residual taxable value of \$1,000.

TABLE 14

Model Year	Percent Good of Cost New
[10]11	90%
[09]10	[60%]66%
[08]09	[57%]62%
[07]08	[54%]59%
[06]07	[51%]55%
[05]06	[48%]52%
[04]05	[45%]48%
[03]04	[42%]45%
[02]03	[39%]41%

[04]02	[36%] 38%
[00]01	[33%] 34%
[99]00	[30%] 31%
[98]99	27%
[97]98	24%
[96]97	[21%] 20%
[95]96	[18%] 17%
[94]95 and prior	[14%] 13%

[03]04	[85%] 81%
[02]03	[79%] 76%
[01]02	[73%] 71%
[00]01	[67%] 64%
[99]00	[61%] 59%
[98]99	[55%] 53%
[97]98	[49%] 46%
[96]97	[42%] 40%
[95]96	[36%] 34%
[94]95	[30%] 28%
[93]94	[23%] 22%
[92]93	[16%] 15%
[91]92 and prior	8%

(o) Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.

- (i) Examples of property in this class include:
 - (A) crystal growing equipment;
 - (B) die assembly equipment;
 - (C) wire bonding equipment;
 - (D) encapsulation equipment;
 - (E) semiconductor test equipment;
 - (F) clean room equipment;
 - (G) chemical and gas systems related to semiconductor manufacturing;
 - (H) deionized water systems;
 - (I) electrical systems; and
 - (J) photo mask and wafer manufacturing dedicated to semiconductor production.
- (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
[09]10	47%
[08]09	34%
[07]08	24%
[06]07	15%
[05]06 and prior	6%

(p) Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

- (i) Examples of property in this class include:
 - (A) billboards;
 - (B) sign towers;
 - (C) radio towers;
 - (D) ski lift and tram towers;
 - (E) non-farm grain elevators; and
 - (F) bulk storage tanks.
- (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
[09]10	[93%] 92%
[08]09	[92%] 86%
[07]08	[91%] 85%
[06]07	[90%] 84%
[05]06	[89%] 83%
[04]05	[88%] 82%

(q) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.

- (i) Examples of property in this class include:
 - (A) houseboats equal to or greater than 31 feet in length;
 - (B) sailboats equal to or greater than 31 feet in length;
- and
 - (C) yachts equal to or greater than 31 feet in length.
- (ii) A vessel, including an outboard motor of the vessel, under 31 feet in length:
 - (A) is not included in Class 17;
 - (B) may not be valued using Table 17; and
 - (C) is subject to an age-based uniform fee under Section 59-2-405.2.
- (iii) Taxable value is calculated by applying the percent good factor against the cost new of the property.
- (iv) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:
 - (A) the following publications or valuation methods:
 - (I) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;
 - (II) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or
 - (III) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:
 - (aa) the manufacturer's suggested retail price for comparable property; or
 - (bb) the cost new established for that property by a documented valuation source; or
 - (B) the documented actual cost of new or used property in this class.
 - (v) The [2010]2011 percent good applies to [2010]2011 models purchased in [2009]2010.
 - (vi) Property in this class has a residual taxable value of \$1,000.

TABLE 17

Model Year	Percent Good of Cost New
[10]11	90%
[09]10	[63%] 61%
[08]09	[61%] 58%
[07]08	[58%] 56%
[06]07	[56%] 53%
[05]06	[53%] 51%
[04]05	[51%] 48%
[03]04	[48%] 46%
[02]03	[46%] 43%

[04]02	[44%] 41%
[00]01	[41%] 38%
[99]00	[39%] 36%
[98]99	[36%] 33%
[97]98	[34%] 31%
[96]97	[31%] 28%
[95]96	[29%] 26%
[94]95	[26%] 23%
[93]94	[24%] 21%
[92]93	[21%] 18%
[91]92	[19%] 16%
[90]91	[16%] 13%
[89]90 and prior	[14%] 11%

(r) Class 17a - Vessels Less Than 31 Feet in Length

(i) Because Section 59-2-405.2 subjects vessels less than 31 feet in length to an age-based uniform fee, a percent good schedule is not necessary.

(s) Class 18 - Travel Trailers and Class 18a - Tent Trailers/Truck Campers.

(i) Because Section 59-2-405.2 subjects travel trailers and tent trailers/truck campers to an age-based uniform fee, a percent good schedule is not necessary.

(t) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

(i) Examples of property in this class include:

- (A) oil and gas exploration equipment;
- (B) distillation equipment;
- (C) wellhead assemblies;
- (D) holding and storage facilities;
- (E) drill rigs;
- (F) reinjection equipment;
- (G) metering devices;
- (H) cracking equipment;
- (I) well-site generators, transformers, and power lines;
- (J) equipment sheds;
- (K) pumps;
- (L) radio telemetry units; and
- (M) support and control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
[09]10	[91%] 90%
[08]09	[90%] 81%
[07]08	[87%] 80%
[06]07	[85%] 75%
[05]06	[81%] 73%
[04]05	[78%] 69%
[03]04	[69%] 65%
[02]03	[60%] 57%
[01]02	[51%] 48%
[00]01	[41%] 39%
[99]00	[31%] 30%
[98]99	[21%] 20%
[97]98 and prior	11%

(u) Class 21 - Commercial Trailers.

(i) Examples of property in this class include:

- (A) dry freight van trailers;

- (B) refrigerated van trailers;
- (C) flat bed trailers;
- (D) dump trailers;
- (E) livestock trailers; and
- (F) tank trailers.

(ii) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.

(iii) The [2010]2011 percent good applies to [2010]2011 models purchased in [2009]2010.

(iv) Commercial trailers have a residual taxable value of \$1,000.

TABLE 21

Model Year	Percent Good of Cost New
[10]11	95%
[09]10	[91%] 83%
[08]09	[86%] 79%
[07]08	[80%] 74%
[06]07	[75%] 70%
[05]06	[69%] 65%
[04]05	[64%] 60%
[03]04	[58%] 56%
[02]03	[53%] 51%
[01]02	[47%] 46%
[00]01	42%
[99]00	[36%] 37%
[98]99	[31%] 33%
[97]98	[25%] 28%
[96]97	[20%] 23%
[95]96	[14%] 19%
[94]95 and prior	[9%] 14%

(v) Class 21a - Other Trailers (Non-Commercial).

(i) Because Section 59-2-405.2 subjects this class of trailers to an age-based uniform fee, a percent good schedule is not necessary.

(w) Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

(i) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

(ii) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary.

(x) Class 22a - Small Motor Vehicles.

(i) Because Section 59-2-405.2 subjects small motor vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(y) Class 23 - Aircraft Required to be Registered With the State.

(i) Because Section 59-2-404 subjects aircraft required to be registered with the state to a statewide uniform fee, a percent good schedule is not necessary.

(z) Class 24 - Leasehold Improvements on Exempt Real Property.

(i) [~~This class includes leasehold improvements to real property installed by a tenant.~~]The Class 24 schedule is to be used only [with]for those leasehold improvements [that are assessed to the lessee of the real property pursuant to]where the underlying real property is owned by an entity exempt from property tax under

Section 59-2-1101. See Tax Commission rule R884-24P-32.

Leasehold improvements include:

- (A) walls and partitions;
- (B) plumbing and roughed-in fixtures;
- (C) floor coverings other than carpet;
- (D) store fronts;
- (E) decoration;
- (F) wiring;
- (G) suspended or acoustical ceilings;
- (H) heating and cooling systems; and
- (I) iron or millwork trim.

(ii) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

(iii) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
[09]10	94%
[08]09	88%
[07]08	82%
[06]07	77%
[05]06	71%
[04]05	65%
[03]04	59%
[02]03	54%
[01]02	48%
[00]01	42%
[99]00	36%
[98]99 and prior	30%

(aa) Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Examples of property in this class include:

- (A) aircraft parts manufacturing jigs and dies;
- (B) aircraft parts manufacturing molds;
- (C) aircraft parts manufacturing patterns;
- (D) aircraft parts manufacturing taps and gauges;
- (E) aircraft parts manufacturing test equipment; and
- (F) aircraft parts manufacturing fixtures.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

Year of Acquisition	Percent Good of Acquisition Cost
[09]10	81%
[08]09	[70%] 63%
[07]08	[54%] 51%
[06]07	[39%] 36%
[05]06	[21%] 20%
[04]05 and prior	4%

(bb) Class 26 - Personal Watercraft.

(i) Because Section 59-2-405.2 subjects personal watercraft to an age-based uniform fee, a percent good schedule is not necessary.

(cc) Class 27 - Electrical Power Generating Equipment and Fixtures

(i) Examples of property in this class include:

- (A) electrical power generators; and
- (B) control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 27

Year of Acquisition	Percent Good of Acquisition Cost
[09]10	97%
[08]09	95%
[07]08	92%
[06]07	90%
[05]06	87%
[04]05	84%
[03]04	82%
[02]03	79%
[01]02	77%
[00]01	74%
[99]00	71%
[98]99	69%
[97]98	66%
[96]97	64%
[95]96	61%
[94]95	58%
[93]94	56%
[92]93	53%
[91]92	51%
[90]91	48%
[89]90	45%
[88]89	43%
[87]88	40%
[86]87	38%
[85]86	35%
[84]85	32%
[83]84	30%
[82]83	27%
[81]82	25%
[80]81	22%
[79]80	19%
[78]79	17%
[77]78	14%
[76]77	12%
[75]76 and prior	9%

The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, [2010]2011.

KEY: taxation, personal property, property tax, appraisals
Date of Enactment or Last Substantive Amendment:
[December 22, 2009]2010
Notice of Continuation: March 12, 2007
Authorizing, and Implemented or Interpreted Law: 59-2-301

End of the Notices of Proposed Rules Section

**NOTICES OF
120-DAY (EMERGENCY) RULES**

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule.

Because **120-DAY RULES** are effective immediately, the law does not require a public comment period. However, when an agency files a **120-DAY RULE**, it usually files a **PROPOSED RULE** at the same time, to make the requirements permanent. Comments may be made on the **PROPOSED RULE**. Emergency or **120-DAY RULES** are governed by Section 63G-3-304; and Section R15-4-8.

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-506
Hospital Provider Assessments**

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 33807
FILED: 07/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to implement the Hospital Provider Assessment Act in accordance with S.B. 273 of the 2010 General Session of the Utah Legislature. (DAR NOTE: S.B. 273 (2010) is found at Chapter 179, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: This new rule outlines hospital provider assessments that include hospital audit procedures, notice requirements, payment requirements, and penalties for non-compliance. It also lists the duties of the Hospital Policy Review Board, specifies rule repeal based on the repeal of the assessment, and specifies that the rule is retrospective to 01/01/2010.

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

EMERGENCY RULE REASON AND JUSTIFICATION:
REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

JUSTIFICATION: S.B. 273 specifically requires the Department of Health to implement by rule the Hospital Provider Assessment Act that became effective on 05/11/2010. The agency has diligently worked since March on this program and was unable to propose the rules earlier. Delaying the effective date of the rule until after public comment would place the agency in violation of state law.

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The Department does not anticipate any impact to the state General Fund because this rule implements a hospital provider assessment which will provide the matching funds needed.

♦ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide hospital assessments for the Medicaid program.

♦ **SMALL BUSINESSES:** Inpatient hospitals may see a total increase of approximately \$56,000,000 in revenue.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Inpatient hospitals may see a total increase of approximately \$56,000,000 in revenue.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs should be minimal for those participating in this program and insignificant compared to the revenue. Great effort was made to implement a streamlined simple program for providers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The additional revenue from this program for hospitals should have a positive fiscal impact and assure Medicaid recipients continue to enjoy good access to needed services.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

EFFECTIVE: 07/01/2010

AUTHORIZED BY: David Sundwall, Executive Director

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

R414-506. Hospital Provider Assessments.

R414-506-1. Introduction and Authority.

This rule defines the scope of hospital provider assessment. This rule is authorized under Title 26, Chapter 36a and governs the services allowed under 42 CFR 447.272.

R414-506-2. Definitions.

The definitions in Section 26-36a-103 apply to this rule.

R414-506-3. Audit of Hospitals.

(1) For hospitals that do not file a Medicare cost report for the time frames outlined in Subsection 26-36a-203(3) and (4), the Department of Health shall audit the hospital's records to determine the correct discharges for the assessment.

(2) Hospitals subject to the assessment shall make their records available for reasonable inspection upon written request from the Department. Failure to make the records available shall be considered non-compliance and subject the hospital to penalties set forth in Section R414-506-5.

R414-506-4. Change in Hospital Status.

(1) If a hospital's status changes during any given year and it no longer falls under the definition of a hospital that is subject to the assessment outlined in Section 26-36a-204 or is no longer entitled to Medicaid hospital access payments under Section 26-36a-205, the hospital must submit in writing to the Division of Medicaid and Health Financing (DMHF) a notice of the status change and the effective date of that change. The notice must be mailed to the correct address, as follows, and is only effective upon receipt by the Reimbursement Unit:

Via United States Postal Service:

Utah Department of Health
DMHF, BCRP
Attn: Reimbursement Unit
P.O. Box 143102
Salt Lake City, UT 84114-3102
Via United Parcel Service, Federal Express, and similar:
Utah Department of Health
DMHF, BCRP
Attn: Reimbursement Unit
288 North 1460 West
Salt Lake City, UT 84116-3231

(2) For any period where a hospital is no longer subject to the assessment and notice has been given under Subsection R414-506-4 (1):

(a) the Department shall require payment of the assessment from that hospital for the full quarter in which the status change occurred and the hospital will receive full payment for the applicable quarter; and

(b) the hospital is exempt from future assessment and not eligible for payment under this rule.

(3) Facilities not subject to the assessment or payments outlined in this rule as of January 1, 2010, are not eligible to receive Medicaid hospital inpatient access payments.

R414-506-5. Penalties and Interest.

(1) If DMHF audits a hospital's records to determine the correct discharges for the assessment for a hospital that is required to file a Medicare cost report but failed to provide its Medicare cost report within the timeline required, DMHF shall fine the hospital five percent of its annual calculated assessment. The fine is payable within 30 days of invoice.

(2) If DMHF audits a hospital's records to determine the correct discharges for the assessment because the hospital does not file a Medicare cost report and did not submit its discharges and supporting documentation within the timeline required, DMHF shall fine the hospital five percent of its annual calculated assessment. The fine is payable within 30 days of invoice.

(3) If a hospital fails to fully pay its assessment on or before the due date, DMHF shall fine the hospital five percent of its quarterly calculated assessment. The fine is payable within 30 days of invoice.

(4) On the last day of each quarter, if a hospital has any unpaid assessment or penalty, DMHF shall fine the hospital five percent of the unpaid amount. The fine is payable within 30 days of invoice.

R414-506-6. State Plan Amendment - Hospital Policy Review Board.

(1) The Hospital Policy Review Board is established under Subsection 26-36a-209(3). It shall serve as an advisory board to DMHF.

(2) The Division Director shall act on behalf of the Executive Director of the Utah Department of Health regarding all Hospital Policy Review Board issues.

(3) DMHF shall appoint a non-voting board member who will manage the Hospital Policy Review Board.

(4) Other individuals of DMHF, as appointed by the Division Director, are non-voting ex-officio advisory members of the Hospital Policy Review Board.

(5) The board shall:

(a) review State Plan Amendments or waivers affecting hospital reimbursement between the date of enactment of this chapter and the end of State Fiscal Year 2013; and

(b) review adjustments to the payment rates for State Fiscal Years 2012 and 2013.

(6) If a board member is unable to serve, DMHF shall fill the vacancy using the same method that it originally used to appoint the board position.

R414-506-7. Rule Repeal.

The Department shall repeal this rule in conjunction with the repeal of the Hospital Provider Assessment Act outlined in Section 26-36a-208.

R414-506-8. Retrospective Operation.

This rule has retrospective operation for taxable years beginning on or after January 1, 2010, as authorized under Section 14 of the 2010 Hospital Provider Assessment Act.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: July 1, 2010

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-36a

**Public Safety, Peace Officer Standards and Training
R728-409**

Refusal, Suspension, or Revocation of Peace Officer Certification

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 33795

FILED: 06/30/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 187 enacted by the 2010 Utah Legislature became effective 05/12/2010. This bill significantly modified the Public Safety Code relating to peace officer certification and the procedures and grounds for the denial, relinquishment, suspension, or revocation of peace officer certification. Rule R728-409 currently in effect no longer complies with state law. This emergency rule is necessary to provide for public safety as it relates to the regulation of peace officer certification and to keep the agency in compliance with state law.

SUMMARY OF THE RULE OR CHANGE: This rule change constitutes a repeal and reenactment. The new rule establishes procedures for the suspension or revocation of a

peace officer's certification that are in compliance with Section 53-6-211 as modified by the 2010 legislature. The rule change provides definitions, outlines investigative procedures, outlines procedures for adjudicative proceedings, and establishes procedures to be followed by the Peace Officer Standards and Training (POST) Council in issuing an order for the suspension or revocation of a peace officer's certification.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-6-211

EMERGENCY RULE REASON AND JUSTIFICATION:

REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare; and place the agency in violation of federal or state law.

JUSTIFICATION: Subsection 53-6-103(3) charges the Peace Officer Standards and Training (POST) Division with ensuring the safety and welfare of the citizens of this state by providing for efficient and professional law enforcement. This emergency rule is necessary to ensure POST may continue to take appropriate action on peace officer misconduct. This rule is also necessary to ensure POST is in compliance with Section 53-6-211 as modified by the 2010 legislature.

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There is no anticipated cost or savings to the state budget by implementation of this rule because the changes in the rule do not establish any additional requirements that would have fiscal impact.
- ◆ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government by implementation of this rule because the changes in the rule do not establish any additional requirements that would have fiscal impact.
- ◆ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses by implementation of this rule because the changes in the rule do not establish any additional requirements that would have fiscal impact.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to other persons by implementation of this rule because the changes in the rule do not establish any additional requirements that would have fiscal impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no anticipated cost or savings to affected persons by implementation of this rule because the changes in the rule do not establish any additional requirements that would have fiscal impact.

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:

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING

410 W 9800 S
SANDY, UT 84070
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Kelly Sparks by phone at 801-256-2321, by FAX at 801-256-0600, or by Internet E-mail at ksparks@utah.gov

EFFECTIVE: 06/30/2010

AUTHORIZED BY: Scott Stephenson , Director

**R728. Public Safety, Peace Officer Standards and Training.
[R728-409. Refusal, Suspension, or Revocation of Peace Officer Certification.**

R728-409-1. Authority.

The authority for the refusal, suspension or revocation of peace officer certification is authorized under Section 53-6-105(K) and 53-6-211 which gives authority for the Director of Peace Officers Standards and Training to make rules for this chapter.

R728-409-2. Purpose.

The purpose of a procedure for the refusal, suspension, or revocation of peace officer certification/authority is to further law enforcement professionalism and to protect the public, employing agencies and law enforcement officers alike.

R728-409-3. Cause to Evaluate Certification for the Refusal, Suspension, or Revocation of Peace Officer Certification or Authority.

The division may initiate an investigation when it receives information that grounds for refusal, suspension, or revocation of certification exist. The initial information may come from any responsible source, including those provisions of R728-409-5. Pursuant to the purpose and intent of 53-6-211, revocation is a permanent deprivation of peace officer certification or authority, and except as outlined in R728-409-28 does not allow for a person who has been revoked in the State of Utah to be readmitted into any peace officer training program conducted by or under the approval of the division, or to have peace officer certification or authority reinstated or restored by the division.

Any of the following provisions may constitute cause for refusal, suspension, or revocation of peace officer certification or authority:

A. Any willful falsification of any information provided to the division to obtain certified status. The information could be in the form of written application, supplementary documentation requested or required by the division, testimony or other oral communication to the division, or any other form of information which could be considered fraudulent or false for purposes of Subsection 53-6-211(1)(d)(i).

B. "Physical or mental disability" for purposes of Section 53-6-211(1)(d)(ii), shall be defined as set forth in Utah Administrative Code, Rule R728-403-9, Physical, Emotional, or Mental Condition Requirement, and division medical guidelines.

C. Conviction of any drug related offense including the provisions of Title 58 Chapter 37.

D. "Addiction to drug or narcotics" for purposes of Section 53-6-211(1)(d)(iii) means addiction to any drug or narcotic as defined in Title 58, Chapter 37.

1. Peace officers who, in the normal course of their peace officer duties and functions, possess, attempt to simulate, unintentionally use or are forced to use, narcotics, drugs, or drug paraphernalia, shall be exempt from the provisions of Section 53-6-211(1)(d)(iii) and (v), so long as their conduct:

a. is authorized by their law enforcement employer; and
b. does not jeopardize the public health, safety or welfare.

2. Addiction to drugs or narcotics as a direct result of the legitimate treatment of a physical, emotional or psychological disease, or injury which is currently being treated by a licensed physician or medical practitioner licensed in this state or any other state, and which has been reported, in writing, to the law enforcement employer and P.O.S.T., shall not be considered a violation of Section 53-6-211(1)(d)(iii) so long as the addiction does not jeopardize the public health, safety or welfare.

a. Addiction to unlawfully obtained drugs or narcotics arising from circumstances not involving (a) the legitimate treatment of a physical disease; (b) circumstances involving surgery or serious injury; (c) from psychological illness; and (d) which has not been treated by a licensed physician or medical practitioner, licensed in this state or any other state, shall be considered a violation of Section 53-6-211(1)(d)(iii).

b. No applicant shall be granted peace officer certification or authority if it is demonstrated that the applicant has a drug addiction which is not under control.

c. A peace officer may have peace officer certification or authority temporarily suspended for the duration of drug rehabilitation. If the peace officer has demonstrated control of the drug addiction as determined by a division medical consultant, peace officer certification or authority shall be restored.

d. Criminal conduct by a person asserting the conduct was the result of drug addiction or dependence shall be grounds for refusal, suspension or revocation of peace officer certification or authority despite the fact that rehabilitation has not occurred prior to the peace officer certification or authority being refused, suspended or revoked.

3. Notwithstanding anything contained in this administrative rule to the contrary, a peace officer may have peace officer certification or authority revoked for conduct in violation of Section 53-6-211(1)(d)(iii), if, prior to the conduct in question, the peace officer has had a previous suspension or revocation of peace officer certification or authority under Section 53-6-211(1)(d)(iii), or similar statute of another jurisdiction.

E. Conviction of a felony.

F. "Crimes involving dishonesty" for purposes of Section 53-6-211(1)(d)(iv) means conviction for criminal conduct, under the statutes of this state or any other jurisdiction, which under the rules of evidence can be used to impeach a witness or involving, but not limited to, any of the following:

1. theft;
2. fraud;
3. tax evasion;
4. issuing bad checks;
5. financial transaction credit card offenses;
6. deceptive business practices;

- ~~7. defrauding creditors;~~
- ~~8. robbery;~~
- ~~9. aggravated robbery;~~
- ~~10. bribery or receiving a bribe;~~
- ~~11. perjury;~~
- ~~12. extortion;~~
- ~~13. falsifying government records;~~
- ~~14. forgery;~~
- ~~15. receiving stolen property;~~
- ~~16. burglary or aggravated burglary.~~

~~G. "Crimes involving unlawful sexual conduct" for purposes of Section 53-6-211(1)(d)(iv) means any violation described in Title 76, Chapter 5, Part 4; Chapter 5a; Chapter 7, Part 1; Chapter 10, Part 13; or Chapter 9, Part 7, Section 702, 702.5 and 702.7.~~

~~H. "Crimes involving physical violence" for purposes of Section 53-6-211(1)(d)(iv) means any violation of Part 1, Assault and Related Offenses, and Part 2, Criminal Homicide, of Title 76; Chapter 5.~~

~~I. "Driving under the influence of alcohol or drugs" for purposes of Section 53-6-211(1)(d)(iv) means any violation of Section 41-6a-502.~~

~~Criminal conduct by an individual asserting the conduct was a result of drug addiction or dependence shall be grounds for refusal, suspension or revocation despite the fact that rehabilitation has not occurred prior to the refusal, suspension or revocation.~~

~~J. "Conduct or pattern of conduct" for purposes of Section 53-6-211(1)(d)(v) means an act or series of acts by a person which occur prior to or following the granting of peace officer certification or authority.~~

~~1. Conduct that shall be considered as grounds for violation of Section 53-6-211(1)(d)(v) shall include:~~

~~a. uncharged conduct which includes the conduct set forth in Rule R728-409-3, which could be considered criminal, although such conduct does not result in the filing of criminal charges against the person, but where the evidence shows that the criminal act did occur, that the person committed the act, and that the burden of proof by a preponderance of the evidence could be established by the division;~~

~~b. criminal conduct where a criminal charge is filed, a conviction is not obtained, but where the evidence shows that the criminal act did occur, that the person committed the act, and that the burden of proof by a preponderance of the evidence appears to exist;~~

~~c. criminal conduct as enumerated in Section 53-6-211(1)(d)(iv) and 53-6-203, where the filing of a criminal charge has resulted in a finding of guilt based on evidence presented to a judge or jury, a guilty plea, a plea of nolo contendere, a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation, diversion agreements, or conviction which has been expunged, dismissed, or treated in a similar manner to either of these procedures;~~

~~d. violations of Section 53-6-211(1)(d)(i) or the refusal to respond, or the failure to respond truthfully, to the questions of POST investigators asked pursuant to R728-409-5;~~

~~e. violations of Section 53-6-211(1)(d)(iii) which involve criminal conduct or jeopardize the public health, safety or welfare;~~

~~f. sexual harassment which is:~~

~~(i) conduct which rises to the level of behavior of a criminal sexual nature which includes, but is not limited to, the unwelcomed touching of the breasts of a female, buttocks or genitals of another, and or taking of indecent liberties with another;~~

~~(ii) behavior by a supervisor which creates the perception in the mind of the subordinate that the granting or withholding of tangible job benefits shall be based on the granting of sexual favors.~~

~~g. sexual conduct which is:~~

~~(i) subject to criminal punishment; or~~

~~(ii) substantially diminishes or, if known, would tend to diminish public confidence and respect for law enforcement; or~~

~~(iii) damages or, if known, would tend to damage a law enforcement department's efficiency or morale; or~~

~~(iv) impairs or, if known, would tend to impair the ability of the peace officer to objectively and diligently perform the duties and functions of a peace officer;~~

~~h. sexual activity protected by the right of privacy, that does not hamper law enforcement, shall not be grounds for refusal, suspension or revocation of peace officer certification or authority.~~

~~i. Other conduct, whether charged or uncharged, which constitutes: malfeasance in office, non-feasance in office, violates the peace officer's oath of office, or a willful and deliberate violation of Title 53, Chapter 6, or the administrative rules contained in Utah Administrative Code, Agency R728.~~

~~(i) Malfeasance for purposes of subsection (h) shall include the commission of some act which is wholly wrongful or unlawful that affects, interrupts or interferes with the performance of official duties.~~

~~(ii) Non-feasance for purposes of subsection (h) shall include the omission of an act which a peace officer by virtue of his employment as such is charged to do.~~

~~(iii) oath of office for purposes of subsection (h) shall include the swearing of a person, upon employment as a peace officer defined in Title 53, Chapter 13, to an oath to support, obey and defend the Constitution of the United States and the Constitution of the State of Utah and discharge the duties of the office with fidelity, or, a similar oath of a county, city or town.~~

~~j. arrest for driving under the influence of alcohol or drugs, where the elements of the offense could be established by a preponderance of the evidence.~~

~~k. Addiction to alcohol:~~

~~(i) if it is demonstrated that a peace officer or applicant for peace officer certification or authority has an alcohol addiction which is not under control;~~

~~(ii) a peace officer with an alcohol addiction may have peace officer certification or authority temporarily suspended for the duration of alcohol rehabilitation. If the peace officer has demonstrated control of the alcohol addiction as determined by a division medical consultant, peace officer certification or authority may be restored;~~

~~(iii) criminal conduct by an individual asserting the conduct was a result of alcohol addiction or dependence shall be grounds for refusal, suspension or revocation despite the fact that rehabilitation has not occurred prior to the refusal, suspension or revocation.~~

~~l. Acts of gross negligence or misconduct which is "clearly outrageous" or shock the conscience of a reasonable person;~~

~~_____ (i) violations of the Law Enforcement Code of Ethics as adopted by the Council;~~

~~_____ (ii) lying under the Garrity warning~~

~~_____ m. A dismissal from military service under any of the following circumstances:~~

~~_____ (i) Bad conduct discharge (BCD)~~

~~_____ (ii) Dishonorable discharge (DD)~~

~~_____ (iii) Administrative discharge of "General under honorable conditions" (GEN).~~

R728-409-4. Conduct Not in Violation of Section 53-6-211(1).

~~_____ Conduct which shall not be considered a violation of this subsection includes:~~

~~_____ A. Traffic violations other than those enumerated in Section 53-6-211(1)(d)(iv) or R728-409-3 herein; or~~

~~_____ B. Violations of individual department policy and procedure as enumerated in Section 53-6-211(4).~~

R728-409-5. Investigative Procedure.

~~_____ A. All investigations initiated shall be commenced upon the reasonable belief that cause exists for the refusal, suspension or revocation of peace officer, correctional officer, reserve/auxiliary officer or special function officer certification as indicated in section 409-3 above.~~

~~_____ B. The initiation of an investigation may occur upon any of the following circumstances:~~

~~_____ 1. A peace officer who has been charged with a criminal violation of law;~~

~~_____ 2. A peace officer who has committed conduct which is a criminal act under law, but which has not been criminally charged and/or where criminal prosecution is not anticipated;~~

~~_____ 3. A peace officer who has committed conduct in violation of section 409-3 above, where the department has conducted disciplinary action and notification of the conduct has been made to the division by the peace officer's department;~~

~~_____ 4. A department which has terminated a peace officer from employment for conduct which is in violation of section 409-3 above;~~

~~_____ 5. A department which has agreed to allow a peace officer to resign, rather than terminate the employment, for conduct which is in violation of section 409-3 above;~~

~~_____ 6. A complaint from a citizen which, on its face, appears to be a violation of section 409-3 above;~~

~~_____ 7. Media attention, confirmed by the employing agency, reporting peace officer misconduct which appears to be in violation of section 409-3 above;~~

~~_____ 8. Information from a peace officer, concerning another peace officer or law enforcement department, alleging improper, unethical, or unlawful conduct in violation of section 409-3 above;~~

~~_____ 9. Information against a peace officer received from any law enforcement agency, criminal justice related agency, or political subdivision alleging improper, unethical, or unlawful conduct in violation of section 409-3 above;~~

~~_____ 10. Administrative procedures instituted by the division to uncover or reveal past criminal conduct or the character of an individual requesting peace officer certification, or entrance into a certified peace officer training program which upon completion would create eligibility for peace officer certification; and/or~~

~~_____ 11. The peace officer may be directed to respond to questions pursuant to a "Garrity Warning." Refusal to respond to questions after being warned, or the failure to respond truthfully, may result in a suspension up to three years depending on aggravating and mitigating circumstances.~~

~~_____ C. All citizens requesting to file a complaint against a peace officer will be requested to sign a written statement detailing the incident, swear to the accuracy of the statement, be advised that complaints found to be malicious in nature may be prosecuted under Section 76-8-511, Falsification of Government Record, and may require that the citizen submit to a polygraph examination concerning the truth and veracity of the complaint.~~

~~_____ D. Non-criminal complaints or information about a peace officer initiated by another peace officer will be submitted in writing detailing the incident or offer the division a tape recorded statement detailing the incident.~~

~~_____ E. A staff member will be assigned to investigate the complaint or information and to make a recommendation to proceed or to discontinue action in the matter.~~

~~_____ 1. If a peace officer under investigation is employed by a law enforcement agency, POST shall notify the peace officer's employing agency concerning the complaint or information.~~

~~_____ 2. POST will refer any complaints made by officers or citizens of a criminal nature to the appropriate agency having jurisdiction.~~

~~_____ 3. Criminal complaints will be handled by the agency having jurisdiction.~~

~~_____ 4. If the responsible agency has an open and active case POST will wait until the agency has completed their investigation before taking action.~~

~~_____ 5. POST will use the investigation and may use the adjudicative findings to help determine its action with regard to an individual's certification. POST will do it's own investigation whenever it feels the necessity to do so.~~

~~_____ 6. POST will take action based on the actual conduct of the individual as determined by an investigative process, not necessarily on the punishment or finding of the court.~~

~~_____ 7. POST's primary concern is conduct that disrupts, diminishes or otherwise jeopardizes public trust and fidelity in law enforcement.~~

~~_____ 8. Complaints that are not criminal will be investigated by the agency having jurisdiction. If the employing agency chooses not to investigate, a POST staff investigator may be assigned to conduct the investigation.~~

~~_____ 9. Witnesses and other evidence may be subpoenaed for the investigation pursuant to Section 53-6-210.~~

~~_____ 10. If ordinary investigative procedures cannot resolve the facts at issue, the peace officer may be requested to submit to a polygraph examination. Refusal to do so could result in the immediate suspension of peace officer certification until such time as an administrative proceeding can be established or other factual information has been received which no longer requires the need for the polygraph examination.~~

~~_____ 11. If an officer is found to have lied under the Garrity warning, his certification may result in a suspension up to three years depending on aggravating and mitigating circumstances.~~

~~_____ F. Subsection (E) will be the method preferred for the investigation of alleged violations of Title 53, Chapter 6, unless~~

special investigative procedures are determined to be more beneficial to the investigative process by the director and the council as per R728-409-7.

G. If the alleged conduct constitutes a public offense for which the individual involved has not been previously convicted, the division shall immediately notify the appropriate prosecutorial authority. If the conduct would also, if proven, constitute grounds for suspension or decertification under Section 53-6-211(1), the director in his discretion may immediately suspend the certification of the individual as provided in Section 63G-4-502 and Rule R728-409-25.

H. If immediate suspension of a peace officer's certification is believed necessary to ensure the safety and welfare of the public, or for insuring the continued public trust or professionalism of law enforcement, the director shall immediately establish the procedures for investigation and adjudicative proceedings in order to fulfill the due process rights of the peace officer.

I. Whenever an investigation is initiated the officer(s) who is under investigation and his department will be notified as soon as reasonably possible, except in cases where the nature of the complaint would make such a course of action impractical. The date and time the department administrator and the officer are notified should be noted in the appropriate space on the complaint form.

J. In all cases, where possible, the investigation shall be conducted with the full knowledge and assistance of the department administrator or the administrator of the employing political subdivision.

K. If during the course of an investigation it appears that criminal action may be involved the information is to be turned over to appropriate local authorities for disposition. It is not the position of the division to be involved in investigating criminal cases against officers. If criminal charges are pending against an officer the division may wait until the case is adjudicated before deciding if any further action is warranted by the division (subject to subsection (5)(J) above).

L. Assigned investigators are to ensure that all investigative procedures are properly documented and recorded in the case file.

M. Final disposition of a case (i.e., close case, refer to department for follow-up action, refer for adjudicative proceeding, etc.) will be made by the deputy director with the approval of the director.

R728-409-6. Special Investigative Proceedings - Procedures.

A. The Director with the concurrence of the Council on Peace Officer Standards and Training, may initiate special investigative proceedings.

B. The purpose of the special investigative proceeding is to hear testimony and other evidence regarding violations of Chapter 6, Title 53.

C. Special investigative proceedings will be presided over by a panel of the Council on Peace Officer Standards and Training consisting of at least three Council members and any persons designated by the Council Chairman and Director of the division.

D. Direct examination of witnesses will be conducted by members of the panel.

E. The division and presiding officer may subpoena witnesses and other evidence for special investigative proceedings, as per Sections 53-6-210 and 63G-4-205(2).

F. The special investigative proceeding will be a proceeding of record by the use of tape recording and/or court reporter.

G. If an officer is found to have lied under the Garrity warning, his certification may result in a suspension up to three years depending on aggravating and mitigating circumstances.

R728-409-7. Purpose of Adjudicative Proceedings.

A. The purpose of adjudicative proceedings will be to establish whether or not:

1. the respondent did in fact commit the alleged conduct; and
2. such conduct falls within the grounds for administrative action enumerated in Section 53-6-211(1); or
3. to exonerate the respondent if the evidence presented fails to prove that the respondent committed the alleged conduct or that such conduct falls within grounds for administrative action enumerated in Section 53-6-211(1); or

4. to recommend, to the Council on Peace Officer Standards and Training and the Director of the Division of Peace Officer Standards and Training, any action to be taken with respect to the respondent if the evidence presented indicates that the respondent committed the alleged conduct and that such conduct falls within grounds for administrative action enumerated in Rule R728-409-2 above and in Section 53-6-211(1).

B. The Administrative Law Judge may recommend refusal, suspension or revocation of the respondent's peace officer, correctional officer, reserve/auxiliary officer or special function officer certification, as applicable.

C. Any decision reached by the Administrative Law Judge against the respondent involving a violation of Subsection 53-6-211(1), must meet the standard burden of proof which will be a preponderance of evidence.

R728-409-8. Commencement of Adjudicative Proceedings - Administrative Complaint.

A. Except as otherwise permitted by Sections 53-6-211(6) and 63G-4-502 and Rules R728-409-8(C) and R728-409-25, all adjudicative proceedings shall be commenced by notice of an Administrative Complaint accompanied by a Notice of Agency Action. The Administrative Complaint will set forth the allegations complained of by the division. A copy of the Administrative Complaint and Notice of Agency Action shall be sent to the individual named on the administrative complaint and notice of agency action or by certified mail.

B. The Administrative Complaint shall be filed and served according to the following requirements:

1. when adjudicative proceedings are commenced by the division, the Administrative Complaint shall be in writing, signed by the Council Chairman and shall include:
 - a. the name and mailing address of the respondent, and the name and address of the agency employee or attorney designated to represent the division;
 - b. the division's file number or other reference number;
 - c. the name of the adjudicative proceeding;

~~_____ d. the date that the notice of the division's action was mailed;~~

~~_____ e. a statement indicating that a formal hearing will be conducted according to the provisions of Sections 63G-4-204 to 63G-4-209, except as otherwise indicated by Rule R728-409 in reference to time of response, as allowed under Section 63G-4-201(2)(vi);~~

~~_____ f. a statement that the respondent shall file a responsive pleading within 30 days of the mailing date of the notice of agency action;~~

~~_____ g. a statement of the time and place of the scheduled adjudicative proceeding, a statement indicating the purpose for which the adjudicative proceeding is to be held, and a statement indicating that a party who fails to attend or participate in the adjudicative proceeding may be held in default;~~

~~_____ h. a statement of the legal authority and jurisdiction under which the administrative proceeding is to be maintained;~~

~~_____ i. the name, title, mailing address, and telephone number of the presiding officer; and~~

~~_____ j. a statement of the purpose of the adjudicative proceeding and, to the extent known by the presiding officer, the questions to be decided.~~

~~_____ C. When the cause of action under Section 53-6-211 and Rule R728-409-3 is conviction of a felony, the following procedures shall apply:~~

~~_____ 1. The division shall send written notice to the peace officer stating that proceedings prior to revocation shall be limited to an information review of written documentation by the presiding officer, and that revocation is mandatory when the presiding officer determines that the peace officer has been convicted of a felony.~~

~~_____ 2. The notice shall state that within 15 days of the mailing date of the notice, the peace officer may request, in writing, an informal hearing before the presiding officer to present evidence that there was no felony conviction, or that the conviction has been overturned, reduced to a misdemeanor or expunged. This notice shall also state that if the peace officer does not so request, the presiding officer, and POST Council, will proceed on the documentation of conviction.~~

R728-409-9. Responsive Pleadings.

~~_____ A. In all adjudicative proceedings, the respondent shall file and serve a written response signed by the respondent or his representative within 30 days of the mailing date of the notice of agency action, that shall include:~~

~~_____ 1. the division's file number or other reference number;~~

~~_____ 2. the name of the adjudicative proceeding;~~

~~_____ 3. a statement of the relief that the respondent seeks;~~

~~_____ 4. a statement of facts;~~

~~_____ 5. a statement summarizing the reasons that the relief requested should be granted.~~

~~_____ B. The response shall be filed with the division.~~

~~_____ C. The presiding officer or the division, pursuant to rule, may permit or require pleadings in addition to the notice of agency action and the response. All papers permitted or required to be filed shall be filed with the division.~~

R728-409-10. Consent Agreements.

~~_____ A. The director may seek a consent agreement for the refusal, suspension or revocation of certification with the individual.~~

~~The consent agreement will be delivered with the administrative complaint.~~

~~_____ B. The individual will have 10 days from receiving the consent agreement to respond to the Director on the consent agreement.~~

~~_____ C. If a consent agreement is not sought or is not reached, the procedure outlined in R728-409-9 above will proceed.~~

~~_____ D. If a consent agreement has been signed by both parties, the adjudicative proceeding will conclude.~~

~~_____ E. The consent agreement procedure will not extend the period of time for responsive pleading to the administrative complaint and notice of agency action.~~

R728-409-11. Scheduling the Adjudicative Proceeding -- Hearing.

~~_____ A. After the division has been served with the responsive pleading, notice of the location, date and time for the adjudicative hearing will be issued.~~

~~_____ B. The adjudicative hearing will be held within a reasonable time after service of the responsive pleading unless a later scheduling is ordered by the presiding officer, or mutually agreed upon by the individual and the division.~~

~~_____ C. When the cause for action is conviction of a felony, the presiding officer will conduct an informal review of the documentation within 30 days after the notice is mailed to the peace officer. If the peace officer timely requests a hearing, the presiding officer shall, within 30 days of the request, hold an informal hearing pursuant to Section 53-6-211(6).~~

R728-409-12. Discovery and Subpoenas.

~~_____ A. In formal adjudicative proceedings parties may conduct limited discovery. The respondent is entitled to a copy of all evidence the division intends to use in the adjudicative proceeding, and other relevant documents in the agency's possession which are necessary to support his or her claims or defenses subject, however, to the Government Records Access and Management Act, UCA 63G-2-101 et seq. Discovery does not extend to interrogatories, requests for admissions or depositions.~~

~~_____ B. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence for adjudicative proceedings shall be issued by the Division of Peace Officer Standards and Training pursuant to Section 53-6-210, or the presiding officer when requested by any party, or may be issued by the presiding officer on his own motion pursuant to Section 63G-4-205.~~

~~_____ C. Discovery is prohibited in informal proceedings.~~

R728-409-13. Procedures for Adjudicative Proceedings -- Hearing Procedures.

~~_____ A. All formal adjudicative proceedings shall be conducted as follows:~~

~~_____ 1. The presiding officer shall regulate the course of the hearing to obtain full disclosure or relevant facts and to afford all the parties reasonable opportunity to present their positions.~~

~~_____ 2. On his own motion, or upon objection by a party, the presiding officer:~~

~~_____ a. may exclude evidence that is irrelevant, immaterial, or unduly repetitious;~~

~~_____ b. shall exclude evidence privileged in the courts of Utah;~~

~~c. may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;~~

~~d. may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, or the record of other proceedings before the agency, and of technical or scientific facts within the agency's specialized knowledge.~~

~~3. The presiding officer may not exclude evidence solely because it is hearsay.~~

~~4. The presiding officer shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.~~

~~5. The presiding officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.~~

~~6. All testimony presented at the hearing, if offered as evidence, to be considered in reaching a decision on the merits, shall be given under oath.~~

~~7. The hearing shall be recorded at the division's expense.~~

~~8. Any party, at his own expense, may have a person approved by the division prepare a transcript of the hearing, subject to any restrictions that the division is permitted by statute to impose to protect confidential information disclosed at the hearing.~~

~~9. All hearings shall be open to all parties.~~

~~10. This rule does not preclude the presiding officer from taking appropriate measures necessary to preserve the integrity of the hearing.~~

~~11. The respondent has the right to counsel. Counsel will not be provided by the division and all costs for counsel will be the sole responsibility of the respondent.~~

~~12. Witnesses at adjudicative hearings may have counsel present. Counsel for witnesses will not have the right to cross-examine. Counsel will not be provided by the division and all costs for counsel will be the sole responsibility of the witness.~~

~~13. Witnesses before an adjudicative hearing may be excluded from adjudicative hearing while other witnesses are testifying.~~

~~14. The presiding officer may issue an order to admonish witnesses not to discuss their testimony with other witnesses appearing to testify or offer evidence to the presiding officer at the adjudicative hearing. This order shall remain in effect until all testimony and evidence has been presented at the hearing.~~

~~15. A person's failure to comply with the admonishment order may result in the refusal to consider testimony or evidence presented, if it is deemed that the testimony or evidence has been tainted through violation of the admonishment order.~~

~~B. When the cause for action is conviction of a felony and the peace officer requests an informal hearing, it shall be conducted, except as modified by these rules, pursuant to Section 63G-4-203.~~

~~C. If the presiding officer finds, by informal review or hearing, that the peace officer has been convicted of a felony, he shall recommend revocation of certification. If the presiding officer determines that there was not a conviction, he or she may recommend action other than revocation.~~

~~**R728-409-14. Procedures for Adjudicative Proceedings -- Intervention.**~~

~~A. Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the division. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:~~

~~1. the division's file number or other reference number;~~

~~2. the name of the proceeding;~~

~~3. a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law; and~~

~~4. a statement of the relief that the petitioner seeks from the division.~~

~~B. The presiding officer shall grant a petition for intervention if he determines that:~~

~~1. the petitioner's legal interests may be substantially affected by the adjudicative proceeding; and~~

~~2. the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.~~

~~C.1. Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.~~

~~2. An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.~~

~~3. The presiding officer may impose the conditions at any time after the intervention.~~

~~**R728-409-15. Default.**~~

~~A. The presiding officer may enter an order of default against a party if:~~

~~1. a party fails to attend or participate in the hearing; or~~

~~2. the respondent in the proceeding fails to file the response required under Rule R728-409-9.~~

~~B. The order shall include a statement of the grounds for default and shall be mailed to all parties.~~

~~C. The defaulted party may seek to have the presiding officer set aside the default order in accordance with Rule 60(b) of the Utah Rules of Civil Procedure.~~

~~D. After issuing the order for default, the presiding officer shall conduct the necessary proceedings to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party.~~

~~**R728-409-16. Procedures for Adjudicative Proceedings -- Recommendations.**~~

~~A. In adjudicative proceedings:~~

~~1. within a reasonable time after the hearing, or after the filing of any post-hearing papers permitted by the presiding officer, the presiding officer shall sign and issue a recommendation that includes:~~

- ~~_____ a. a statement of the presiding officer's findings of fact based exclusively on the evidence of record in the adjudicative hearing or on facts officially noted;~~
- ~~_____ b. a statement of the presiding officer's conclusions of law;~~
- ~~_____ c. a statement of the reasons for the presiding officer's recommendation;~~
- ~~_____ d. a statement of recommended agency action;~~
- ~~_____ e. a notice of the right to apply for council review; and~~
- ~~_____ f. the time limits applicable to any review.~~
- ~~_____ 2. The presiding officer may use his experience, technical competence, and specialized knowledge to evaluate the evidence.~~
- ~~_____ 3. No finding of fact that was contested may be based solely on hearsay evidence.~~
- ~~_____ 4. This section does not preclude the presiding officer from issuing interim orders to:

 - ~~_____ a. notify the parties of further hearings;~~
 - ~~_____ b. notify the parties of provisional rulings on a portion of the issues presented; or~~
 - ~~_____ c. otherwise provide for the fair and efficient conduct of the adjudicative hearing.~~~~

R728-409-17. Notice of Presiding Officer's Recommendation.

- ~~_____ A. If the evidence against the individual does not support the conduct alleged in the administrative complaint with respect to Section 53-6-211(1), the presiding officer, hereafter referred to as Administrative Law Judge, will mail the parties a copy of the recommendation upon issuance of the recommendation.~~
- ~~_____ B. If the Administrative Law Judge finds that the evidence against the individual does support the conduct alleged in the administrative complaint with respect to Section 53-6-211(1), the Administrative Law Judge will mail the parties a copy of the recommendation upon issuance of the recommendation.~~
- ~~_____ C. The Administrative Law Judge may issue his/her recommendation to the parties by certified mail.~~

R728-409-18. Request for Review of Presiding Officer's Recommendation.

- ~~_____ A. Except when revocation is recommended for conviction of a felony, the parties will have 15 days from the date of issuance of the Administrative Law Judge's recommendation to request a review of the recommendation before the council.~~
- ~~_____ B. A request by any party for council review of the Administrative Law Judge's recommendation will be made in writing to the council and will contain all issues which the party wishes to raise. The request must specify whether the party is challenging the ALJ's recommended findings of fact, conclusions of law, and/or agency action. If the party is challenging the recommended findings or conclusions, the request must particularly set forth which findings and/or conclusions it wants reviewed and considered by the council. A copy of the request will be served upon all other parties.~~
- ~~_____ C. The party seeking review shall provide transcripts, documents, and briefs to the council within 45 days after the filing of the notice requesting review. If the party is challenging the recommended findings of fact or conclusions of law, it must support its request with specific references and citations to the hearing record, and copies of the evidence received by the ALJ at the hearing, and which are relevant to the challenged recommendations.~~

If the request is based on oral testimony presented at the hearing, the party shall provide, at its expense, a transcription of that relevant testimony. No party shall be permitted oral argument before the council unless a request for oral argument is filed with the Council within this same 45-day period.

~~_____ D. The other party or parties shall have 30 days from the date the transcripts, documents and briefs are filed by the party seeking review, to file any response to the request for review. Any response may include additional transcripts or documents necessary for review.~~

~~_____ E. The council shall whenever possible within a reasonable time from the filing of the notice requesting review to provide for a review hearing before the council.~~

~~_____ F. Any review shall be based upon the administrative hearing record and briefs or other documents submitted by the parties. If a party has submitted portions of the hearing transcript, or other evidence admitted at the hearing, the council may, in its discretion, require the division to submit all or any other portion of the hearing transcript or evidence, and may continue the review hearing for that purpose. If necessary to make a determination, the council may also require the agency to subpoena any of the witnesses who testified in the evidentiary hearing, to appear at the next regularly scheduled council meeting, to answer questions from council members.~~

~~_____ G. If oral argument is requested by either party, at the review hearing the parties will be permitted 20 minutes each to present oral argument on their respective positions identified in their written requests and briefs. Any testimony presented during oral argument, if offered as evidence to be considered in reaching a decision on the review, shall be given under oath.~~

~~_____ H. If no oral argument is requested, the council shall, within a reasonable time after all documents, transcripts and briefs have been filed, issue to the director a review decision.~~

~~_____ I. If oral argument has been received, the council, within a reasonable time after the review hearing, shall issue to the Director a review decision.~~

~~_____ J. The council has the power to make a full review of the Administrative Law Judge's recommendation. This power includes, but is not limited to, the power to accept the ALJ's recommended findings of fact, conclusions of law, and/or agency action, or to reject all or a portion thereof, and render its own findings, conclusions and proposed action on the officer's certification.~~

~~_____ K. Any periods of time designated in this rule for the filing of documents and pleadings, or for scheduling of hearings may be extended by the council for good cause.~~

R728-409-19. Council Action and Finding by Director.

~~_____ A. Unless a consent order has been signed by all parties as per Rule R728-409-10 or a request for review is made to the Council as per Rule R728-409-18, and following the adjudicative proceeding or following a default by the individual as outlined in Rule R728-409-15:~~

~~_____ 1. The division representative will issue to the council the recommendation of the Administrative Law Judge. The council will review the Administrative Law Judge's recommendation and make a decision to concur or reject that recommendation, and to issue any alternative recommendation it may desire.~~

~~_____ 2. The council will issue and file its decision with the director.~~

R728-409-20. Director's Final Order.

- ~~_____ A. In adjudicative proceedings:

 - ~~_____ 1. After a majority of the council recommends to refuse, suspend or revoke respondent's peace officer, correctional officer, reserve/auxiliary officer, or special function officer certification, or to take no action against respondent, the director shall prepare and issue a final order within 30 days outlining the council's decision.~~
 - ~~_____ 2. The final order will include information on the appeal process as outlined in administrative rules R728-409-21, 22, 23.~~
 - ~~_____ 3. The director shall, upon issuance, serve a copy of the final order on the respondent by certified mail and shall mail a copy to the employing agency.~~~~

R728-409-21. Division Review - Reconsideration.

- ~~_____ A. Except when revocation is recommended for conviction of a felony within ten days after the date that the director's final order is issued, any party may file a written request for reconsideration, stating the specific grounds upon which relief is requested. The filing of the request is not a prerequisite for seeking judicial review of the order.~~
- ~~_____ B. The request for reconsideration shall be filed with the division by the person making the request.~~
- ~~_____ C.1. The director, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

 - ~~_____ 2. If the director or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for rehearing shall be considered to be denied.~~~~

R728-409-22. Judicial Review - Exhaustion of Administrative Remedies.

- ~~_____ A. A party aggrieved may obtain judicial review of final agency action only after exhausting all administrative remedies available, except that:

 - ~~_____ 1. The court may relieve a party seeking judicial review of the requirement to exhaust any or all administrative remedies if:

 - ~~_____ a. the administrative remedies are inadequate; or~~
 - ~~_____ b. exhaustion of remedies would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion.~~~~
 - ~~_____ B.1. A party shall file a petition for judicial review of final agency action within 30 days after the date that the order constituting the final agency action is issued.~~
 - ~~_____ 2. The petition shall name the agency and all other appropriate parties as respondents and shall meet the form requirements specified in Chapter 4 of Title 63G.~~~~

R728-409-23. Judicial Review - Adjudicative Proceedings.

- ~~_____ A. At the conclusion of formal adjudicative proceedings, the Utah Court of Appeals has jurisdiction to review the director's final order.~~
- ~~_____ B. To seek judicial review of the director's final order, the petitioner shall file a petition for review of agency action in the form required by the Rules of the Utah Court of Appeals.

 - ~~_____ 1. The Rules of the Utah Court of Appeals govern all additional filings and proceedings in the Utah Court of Appeals.~~
 - ~~_____ C. The contents, transmittal, and filing of the agency's record for judicial review of formal adjudicative proceedings are governed by the Rules of the Utah Court of Appeals, except that:~~~~

- ~~_____ 1. all parties to the review proceedings may stipulate to shorten, summarize, or organize the record;~~
- ~~_____ 2. the Utah Court of Appeals may tax the cost of preparing transcripts and copies for the record:

 - ~~_____ a. against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or~~
 - ~~_____ b. according to any other provision of law.~~
 - ~~_____ c. The scope of judicial review by the Utah Court of Appeals is controlled by Section 63G-4-403. Relief granted by the Utah Court of Appeals is controlled by Section 63G-4-404.~~
 - ~~_____ D. If peace officer certification is revoked for conviction of a felony after an informal hearing, the district courts have jurisdiction to review the final order pursuant to Sections 63G-4-401 and 63G-4-402.~~~~

R728-409-24. Judicial Review - Stay and Other Temporary Remedies Pending Final Disposition.

- ~~_____ A. The director may grant a stay of the final order or other temporary remedy during the pendency of judicial review, according to the division's rules.~~
- ~~_____ B. Parties shall petition the director for a stay or other temporary remedies unless extraordinary circumstances require immediate judicial intervention.~~
- ~~_____ C. If the director denies a stay or denies other temporary remedies requested by a party, the director's order of denial shall be mailed to all parties and shall specify the reasons why the stay or other temporary remedy was not granted.~~
- ~~_____ D. If the director has denied a stay or other temporary remedy to protect the public health, safety, or welfare against a substantial threat, the court may not grant a stay or other temporary remedy unless it finds that:

 - ~~_____ 1. the director violated the division's rules in denying the stay; or~~
 - ~~_____ 2.a. the party seeking judicial review is likely to prevail on the merits when the court finally disposes of the matter;~~
 - ~~_____ b. the party seeking judicial review will suffer irreparable injury without immediate relief;~~
 - ~~_____ c. granting relief to the party seeking review will not substantially harm other parties to the proceedings; and~~
 - ~~_____ d. the threat to the public health, safety, or welfare relied upon by the agency is not sufficiently serious to justify the director's action under the circumstances.~~~~

R728-409-25. Emergency Adjudicative Proceedings.

- ~~_____ A. The division may issue an order on an emergency basis without complying with the requirements of this chapter if:

 - ~~_____ 1. the facts known by the division or presented to the division show that an immediate and significant danger to the public health, safety, or welfare exists; and~~
 - ~~_____ 2. the threat requires immediate action by the division.~~
 - ~~_____ B. In issuing an emergency order, the division shall:

 - ~~_____ 1. limit the order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;~~
 - ~~_____ 2. issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the division's utilization of an emergency adjudicative proceeding; and~~
 - ~~_____ 3. give immediate notice to the person who is required to comply with the order.~~~~~~

~~C. Upon the commencement of an emergency adjudicative proceeding, the division shall commence a formal adjudicative proceeding in accordance with the other provisions of this rule in order not to infringe upon any legal right or interest of any party.~~

R728-409-26. Civil Enforcement.

~~A.1. In addition to other remedies provided by law, an division may seek enforcement of an order by seeking civil enforcement in the district courts.~~

~~2. The action seeking civil enforcement of the division's order must name, as defendants, each alleged violator against whom the agency seeks to obtain civil enforcement.~~

~~3. Venue for an action seeking civil enforcement of the division's order shall be determined by the requirements of the Utah Rules of Civil Procedure.~~

~~4. The action may request, and the court may grant, any of the following:~~

- ~~a. declaratory relief;~~
- ~~b. temporary or permanent injunctive relief;~~
- ~~c. any other civil remedy provided by law; or~~
- ~~d. any combination of the foregoing.~~

~~B.1. Any person whose interests are directly impaired or threatened by the failure of the division to enforce the division's order may timely file a complaint seeking civil enforcement of that order, but the action may not be commenced;~~

~~a. until at least 30 days after the plaintiff has given notice of his intent to seek civil enforcement of the alleged violation to the director, the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;~~

~~b. if the division has filed and is diligently prosecuting a complaint seeking civil enforcement of the same order against the same or a similarly situated defendant; or~~

~~c. if a petition for judicial review of the same order has been filed and is pending in court.~~

~~2. The complaint seeking civil enforcement of the division's order must name, as defendants, the division, and each alleged violator against whom the plaintiff seeks civil enforcement.~~

~~3. Except to the extent expressly authorized by statute, a complaint seeking civil enforcement of the division's order may not request, and the court may not grant, any monetary payment apart from taxable costs.~~

~~C. In a proceeding for civil enforcement of the division's order, in addition to any other defenses allowed by law, a defendant may defend on the ground that:~~

- ~~1. the order sought to be enforced was issued by the division without jurisdiction to issue the order;~~
- ~~2. the order does not apply to the defendant;~~
- ~~3. the defendant has not violated the order; or~~
- ~~4. the defendant violated the order but has subsequently complied.~~

~~D. Decisions on complaints seeking civil enforcement of the division's order are reviewable in the same manner as other civil cases.~~

R728-409-27. Declaratory Orders.

~~A. Any person may file a request for division actions, requesting that the division issue a declaratory order determining~~

~~the applicability of a statute, rule, or order within the primary jurisdiction of the division to specified circumstances.~~

~~B. The division shall not issue a declaratory order if:~~

~~1. the request is one of a class of circumstances that the division has by rule defined as being exempt from declaratory orders; or~~

~~2. the person requesting the declaratory order participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the present request.~~

~~a. The division may issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party, only if that person consents in writing to the determination of the matter by a declaratory proceeding.~~

~~C. Persons may intervene in declaratory proceedings if:~~

- ~~1. they meet the requirements of Rule R728-409-12; and~~
- ~~2. they file timely petitions for intervention according to division rules.~~

~~D. After receipt of a petition for a declaratory order, the division may issue a written order:~~

- ~~1. declaring the applicability of the statute, rule, or order in question to the specified circumstances;~~
- ~~2. setting the matter for adjudicative proceedings;~~
- ~~3. agreeing to issue a declaratory order within a specified time; or~~
- ~~4. declining to issue a declaratory order and stating the reasons for its action.~~

~~E. A declaratory order shall contain:~~

- ~~1. the names of all parties to the proceeding on which it is based;~~
- ~~2. the particular facts on which it is based; and~~
- ~~3. the reasons for its conclusion.~~

~~F. A copy of all orders issued in response to a request for a declaratory proceeding shall be mailed promptly to the petitioner and any other parties.~~

~~G. A declaratory order has the same status and binding effect as any other order issued in an adjudicative proceeding.~~

~~H. Unless the petitioner and the division agree in writing to an extension, if the division has not issued a declaratory order within 60 days after receipt of the request for a declaratory order, the petition is denied.~~

R728-409-28. Reconsideration Based on Mistake, Fraud, or Newly Discovered Evidence.

~~A. Reconsideration of a decision by POST Council, and a new opportunity to be heard, may be granted for any of the following reasons:~~

- ~~1. The decision of POST Council was based on a mistake of law or fact;~~
- ~~2. There was fraud, misrepresentation or misconduct in the adjudicative proceeding; or~~
- ~~3. There is newly discovered material evidence which the party could not, with reasonable diligence, have discovered and produced during the adjudicative proceedings.~~

~~B. At any time after a final order is issued, either party may request reconsideration under this rule, by complying with the procedures set forth in R728-409-18(B) through (K).~~

~~C. Reconsideration by POST Council pursuant to this rule shall be a two-step process:~~

1. A written request and information outlining the reasons and justification for making the request shall be submitted to a special subcommittee consisting of the presidents of the Chiefs of Police Association and the Sheriffs Association, or their designees, and another POST Council member designated by the Chairman, which shall review the request and information provided and decide whether the party seeking consideration has, by a preponderance of the evidence, established that the prior decision was based on one or more of the grounds set forth above. The subcommittee will notify the director of its decision, who will then send out a notice of that decision to both parties.

2. If the subcommittee decides step one in the affirmative, the matter will be scheduled for consideration by POST Council at the next regularly scheduled meeting. POST shall give reasonable notice to the parties of the date, time and location of the meeting. POST Council shall reconsider the correct, clarified or new evidence, and render a decision based on the written request and information and oral argument, (if such was timely requested.) Any oral testimony presented to the council shall be under oath, and subject to the penalty of perjury.

3. POST Council's decision shall be communicated to the Director, who shall then notify the parties thereof, in writing and consistent with R728-409-20. The parties will then have the same appeal rights set forth in R728-409-22, 409-23, and 409-24.

D. The definitions set forth in Utah Rules of Civil Procedures, Rules 59 and 60, and interpretive case law thereon, shall apply to determinations under this rule.]

R728-409. Suspension or Revocation of Peace Officer Certification.

R728-409-1. Authority.

Section 53-6-105(1)(k) provides that the director shall, with the advice of the council, make rules necessary to administer Title 53 Chapter 6.

R728-409-2. Purpose.

The purpose of this rule is to establish procedures for the suspension or revocation of a peace officer's certification.

R728-409-3. Definitions.

A. Terms used in this rule are defined in Sections 53-6-102.

B. In addition:

1. "ALJ" means an administrative law judge who conducts administrative hearings as provided in Subsection 53-6-211(3);

2. "Garrity warning" means a warning issued based on the decision in *Garrity v. New Jersey*, 385 U.S. 493 (1967);

3. "on duty" means that a peace officer is:

a. actively engaged in any of the duties of his employment as a peace officer;

b. receiving compensation for activities related to his employment as a peace officer;

c. on the property of a law enforcement facility;

d. in a law enforcement vehicle which is located in a public place; or

e. in a public place and is wearing a badge or uniform, authorized by a law enforcement agency, which readily identifies the wearer as a peace officer;

4. "respondent" means a peace officer against whom the division has initiated an adjudicative proceeding under Section 53-6-211;

5. "revocation" means the permanent deprivation of a peace officer's certification, which does not allow for a peace officer whose certification has been revoked to be readmitted into any peace officer training program conducted by or under the approval of the division, or to have peace officer certification reinstated or restored by the division;

6. "sexual conduct" means the touching of the anus, buttocks or any part of the genitals of a person, or the touching of the breast of a female, whether or not through clothing, with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant; and

7. "suspension" means the temporary deprivation of a peace officer's certification.

R728-409-4. Cause for the Suspension or Revocation of a Peace Officer's Certification.

The division may initiate an investigation when it receives information that grounds for the suspension or revocation of a peace officer's certification exist under Subsection 53-6-211(1).

R728-409-5. Conduct Not in Violation of Subsection 53-6-211(1).

Conduct which shall not be considered a violation of Subsection 53-6-211(1) includes:

A. Any traffic offense which is a class C misdemeanor or infraction;

B. A violation of a law enforcement agency's policy or procedure;

C. Conduct which is discovered or established through questioning which goes beyond the scope of a properly administered interview as established in *Garrity v. New Jersey*, 385 U.S. 493 (1967); or

D. Sexual activity which is protected under the right of privacy as recognized by the United States Supreme Court in *Lawrence v. Texas*, 539 U.S. 558 (2003).

R728-409-6. Investigative Procedure.

A. The division shall initiate an investigation when it receives information from any reliable source that grounds for the suspension or revocation of certification exist under Subsection 53-6-211(1), including when any of the following circumstances occur:

1. A peace officer is charged with a criminal violation of law;

2. A peace officer has committed conduct which is a criminal act under law, but which has not been criminally charged or where criminal prosecution is not anticipated;

3. A peace officer has committed conduct in violation of Subsection 53-6-211(1), where the peace officer's employing agency has conducted disciplinary action and notified the division;

4. A peace officer is terminated for conduct which is in violation of Subsection 53-6-211(1);

5. A peace officer resigns for conduct which is in violation of Subsection 53-6-211(1);

6. A citizen makes a complaint which, on its face, appears to be a violation of Subsection 53-6-211(1);

7. The media reports about officer misconduct which appears to be in violation of Subsection 53-6-211(1) and there is independent evidence to confirm that the conduct occurred;

8. A peace officer or law enforcement agency makes a complaint about a peace officer alleging conduct in violation of Subsection 53-6-211(1);

9. A criminal justice related agency or political subdivision makes a complaint about a peace officer alleging conduct in violation of Subsection 53-6-211(1);

10. A background investigation has been conducted by the division on a peace officer seeking peace officer certification or entrance into a certified peace officer training program which indicates that the peace officer has engaged in conduct in violation of Subsection 53-6-211(1); or

11. A peace officer has provided false information to the peace officer's employing agency after having been issued a properly administered Garrity warning.

C. A citizen seeking to file a complaint against a peace officer may be required to sign a written statement, detailing the incident and swearing to the accuracy of the statement after being advised that providing a false statement may result in prosecution under Section 76-8-511, Falsification of Government Record.

D. A peace officer seeking to file a complaint against another peace officer may submit written documentation detailing the incident.

E. If the division receives a complaint or information about misconduct of a peace officer, an investigator from the division will be assigned to investigate the complaint or information and to make a recommendation to proceed or to discontinue action in the matter. Assigned investigators are to ensure that all investigative procedures are properly documented and recorded in the case file.

F. If a peace officer under investigation is employed by a law enforcement agency, the division shall notify the peace officer's employing agency concerning the complaint or information, unless the nature of the complaint would make such a course of action impractical. The date and time the department administrator and the officer are notified should be noted in the appropriate space on the complaint form.

G. The division will refer any complaints made by officers or citizens of a criminal nature to the appropriate law enforcement agency having jurisdiction for investigation and prosecution if such a referral has not already been made.

H. If the law enforcement agency which employs the peace officer has an open and active investigation, the division will wait until the agency has completed their investigation before taking action unless the division determines that it is not in the public's best interest to wait.

I. The division may use the information gathered by the law enforcement agency which employs the peace officer in its investigation and may use any adjudicative findings to help determine what course of action to take. This will not preclude the division from conducting an independent investigation if the division finds it is necessary.

J. The division will take action based on the actual conduct of the peace officer as determined by an investigative process, not necessarily on the punishment instituted by the law

enforcement agency which employs the peace officer or any court findings.

K. Witnesses and other evidence may be subpoenaed for the investigation pursuant to Section 53-6-210.

L. If ordinary investigative procedures cannot resolve the facts at issue, a peace officer may be requested to submit to a polygraph examination.

M. The director may immediately suspend a peace officer's certification as provided in Section 63G-4-502 if the director believes it is necessary to ensure the safety and welfare of the public, the continued public trust or professionalism of law enforcement.

N. Once the investigation is concluded, the division shall determine whether there is sufficient evidence to proceed with an adjudicative proceeding.

O. If the division determines that there is insufficient evidence to find that a peace officer engaged in conduct in violation of Subsection 53-6-211(1), the director shall issue a letter to the peace officer indicating that the investigation has been concluded and that the division shall take no action.

R728-409-7. Purpose of Adjudicative Proceedings.

A. The purpose of an adjudicative proceeding will be to determine whether there is sufficient evidence to find that the respondent committed the alleged conduct by clear and convincing evidence and whether such conduct falls within the grounds for administrative action enumerated in Subsection 53-6-211(1).

B. All adjudicative proceedings initiated by the division for the purpose of suspending or revoking a peace officer's certification shall be formal proceedings as provided by Section 63G-4-202.

R728-409-8. Commencement of Adjudicative Proceedings -- Filing of the Notice of Agency Action.

A. Except as provided by 63G-4-502 all adjudicative proceedings initiated by the division for the purpose of suspending or revoking a peace officer's certification shall be commenced by the filing of a Notice of Agency Action.

B. The Notice of Agency Action shall be signed by the director and shall comply with the requirements of Section 63G-4-201.

C. The Notice of Agency Action shall be filed with the division and a copy shall be sent to the respondent by certified mail.

R728-409-9. Responsive Pleadings.

A. The respondent must file with the division a written response, signed by the respondent or his attorney, within 30 days of the mailing date of the Notice of Agency Action.

B. The written response must comply with the requirements in Section 63G-4-204.

R728-409-10. Consent Agreements.

A. Once a Notice of Agency Action has been issued, the division may seek a consent agreement with the respondent.

B. The respondent will have 20 days from the date that the consent agreement is signed by the director to respond to the division regarding the consent agreement.

C. If a consent agreement is not sought or is not reached, the adjudicative proceeding will continue. The period of time in

which the respondent must file a responsive pleading to the Notice of Agency Action is not extended if the parties are unable to reach a consent agreement.

D. If a consent agreement is reached, it shall be signed by the respondent and the director and be filed with the division. The consent agreement shall indicate that the matter shall be heard at the next regularly scheduled council meeting.

R728-409-11. Default.

A. The ALJ may enter an order of default against a party if:

1. the respondent fails to file the response required by rule R728-409-9; or

2. the respondent fails to attend or participate in the hearing.

B. The order of default shall include a statement of the grounds for default and shall indicate that the matter will be heard at the next regularly scheduled council meeting.

C. The ALJ shall issue the order of default. The order of default shall be filed with the division and a copy shall be sent to the respondent by certified mail.

D. The respondent may seek to set aside the default order by filing a motion within 3 months of the date of the order of default. The ALJ may set aside the order of default for good cause shown.

R728-409-12. Scheduling a Hearing Before the ALJ.

A. After the division receives the responsive pleading from the respondent, notice of the location, date and time for the hearing will be issued by the division. The notice of hearing shall be filed with the division and a copy shall be sent to the respondent by certified mail.

B. The hearing will be held within a reasonable time after service of the responsive pleading unless a later scheduling is ordered by the ALJ, or mutually agreed upon by the respondent and the division.

R728-409-13. Discovery and Subpoenas.

A. In formal adjudicative proceedings parties may conduct only limited discovery. A respondent's right to discovery does not extend to interrogatories, requests for admissions, request for the production of documents, request for the inspection of items, or depositions.

B. Upon request, the respondent is entitled to a copy of the materials contained in the division's investigative file that the division intends to use in the adjudicative proceeding.

C. The disclosure of all discovery materials is subject to the provisions in the Government Records Access and Management Act, Section 63G-2-101 et seq. The division may charge a fee for discovery in accordance with Section 63G-2-203.

D. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence for adjudicative proceedings shall be issued by the division pursuant to Section 53-6-210, by the ALJ when requested by any party, or by the ALJ on his own motion pursuant to Section 63G-4-205.

R728-409-14. Hearing Procedures.

A. All hearings shall be conducted by the ALJ according to the requirements of Section 63G-4-206.

B. At the hearing, the respondent has the right to be represented by an attorney. Legal counsel will not be provided to the respondent by the division and all costs associated with representation will be the sole responsibility of the respondent.

R728-409-15. ALJ Decision.

A. Within 30 days from the date a hearing is held, the ALJ shall sign and issue a written decision, which shall include a statement of:

1. the ALJ's findings of fact based exclusively on the evidence of record in the adjudicative hearing or on facts officially noted;

2. the ALJ's conclusions of law; and

3. the reasons for the ALJ's decision.

B. If the ALJ finds that there is sufficient evidence to find that the respondent engaged in conduct in violation of Subsection 53-6-211(1), the ALJ's decision shall indicate that the matter will be heard at the next regularly scheduled council meeting.

C. If the ALJ finds that there is insufficient evidence to find that the respondent engaged in conduct in violation of Subsection 53-6-211(1), the matter will be dismissed.

D. The ALJ shall file the decision with the division and a copy shall be sent to the respondent by certified mail.

R728-409-16. Action by the Council.

A. Once a consent agreement has been reached or there has been an order of default or decision issued by the ALJ, the division shall present the matter to the council at their next regularly scheduled meeting. The division shall provide the council with the pleadings contained in the administrative file. The division shall also provide the council with any written information or comments provided by the chief, sheriff, or administrative officer of the respondent's employing agency.

B. At the council meeting the respondent or the respondent's attorney may address the council regarding whether the respondent's peace officer certification should be suspended or revoked.

C. The council shall review the matter and shall determine whether suspension or revocation of the respondent's peace officer certification is appropriate based upon the facts of the case and the POST Disciplinary Guidelines which were adopted on June 7, 2010.

R728-409-17. Final Order.

A. After the council has decided the matter, the council chairperson shall issue a final order within 30 days of the council meeting.

B. The final order shall indicate the action taken by the council with regards to the respondent's peace officer certification and shall include information on the appeal process outlined in R728-409-18.

C. The council's action shall be effective on the date that the final order is issued.

D. The council chairperson shall file the final order with the division. A copy of the final order shall be sent to the respondent by certified mail and the respondent's employing agency by regular mail.

R728-409-18. Judicial Review.

A. A respondent may obtain judicial review of the council's action by filing a petition for judicial review with the Utah Court of Appeals within 30 days after the date that the final order is issued by the council chairperson.

B. The petition must meet all requirements specified in Sections 63G-4-401 and 403.

KEY: law enforcement officers, certification, investigations, rules and procedures

Date of Enactment or Last Substantive Amendment: June 30, 2010

Notice of Continuation: February 27, 2007

Authorizing, and Implemented or Interpreted Law: 53-6-211

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the 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.

Education, Administration **R277-107** Educational Services Outside of Educator's Regular Employment

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 33800
FILED: 07/01/2010

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53A-1-402.5 directs the Utah State Board of Education to make rules that establish basic ethical conduct standards for public education employees who provide public education-related services or activities outside of their regular employment.

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 comment has 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: State law continues to require the Utah State Board of Education to make rules that establish basic ethical conduct standards for employees who provide public education-related services or activities outside of their regular employment. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

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

EFFECTIVE: 07/01/2010

Education, Administration **R277-459** Classroom Supplies Appropriation

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 33801
FILED: 07/01/2010

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-402(1)(b)

directs the Utah State Board of Education to establish rules and minimum standards for school programs.

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 comment has 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: This rule provides necessary standards and procedures for distribution of classroom supply money appropriated by the Utah Legislature for eligible classroom teachers. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

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

EFFECTIVE: 07/01/2010

Impacted Schools Program, distribute the appropriation, and monitor the effectiveness of the Program.

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 comment has 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: State law continues to require the Utah State Board of Education to have rules to implement programs for students at risk. The rule provides necessary information for school districts and charter schools to apply and receive Highly Impacted Schools funding. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

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

EFFECTIVE: 07/01/2010

Education, Administration
R277-464
Highly Impacted Schools

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33802
FILED: 07/01/2010

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-17a-121(2) directs the Utah State Board of Education to develop rules to implement programs for at risk students. Section 53A-15-701 directs the Board to develop a formula, administer the Highly

Education, Administration
R277-474

School Instruction and Human
Sexuality

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33803
FILED: 07/01/2010

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE

OR REQUIRE THE RULE: Subsection 53A-13-101(1)(c)(ii) (B) directs the Utah State Board of Education to develop a rule to allow local boards to adopt human sexuality education materials or programs.

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 comment has 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: State law continues to require a rule which addresses instruction about materials used in discussing human sexuality in the public schools at appropriate grade levels. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

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

EFFECTIVE: 07/01/2010

of instruction within the public schools relating to the flag of the United States.

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 comment has 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: State law continues to direct the Utah State Board of Education to provide a rule for a program of instruction within the public schools relating to the flag of the United States. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

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

EFFECTIVE: 07/01/2010

Education, Administration
R277-475
Patriotic Education

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33804
FILED: 07/01/2010

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53A-13-101.6 directs the Utah State Board of Education to provide a rule for a program

Education, Administration
R277-476
Incentives for Elementary Reading Program

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33805
FILED: 07/01/2010

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53A-3-402.11 directs the Utah State Board of Education to provide a rule for the

application procedures for the Scholarship Program for elementary teachers seeking reading endorsements.

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 comment has 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: State law continues to direct the Utah State Board of Education to provide a rule for the application procedures for the Scholarship Program for elementary teachers seeking reading endorsements. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY, UT 84111-3272
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

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

EFFECTIVE: 07/01/2010

the Utah State Board of Education to adopt rules in accordance with its responsibilities. Subsection 53A-6-104(2) (a) authorizes the Utah State Board of Education to rank, endorse, or classify licenses.

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 comment has 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 rule provides necessary criteria for local boards of education to employ educators in appropriate assignments and receive state funding for appropriately qualified and assigned staff, and to satisfy the requirements of the federal Elementary and Secondary Education Act in order to receive federal funds. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY, UT 84111-3272
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

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

EFFECTIVE: 07/01/2010

Education, Administration
R277-520

Appropriate Licensing and Assignment
 of Teachers

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 33806
 FILED: 07/01/2010

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(3) permits

Environmental Quality, Environmental
 Response And Remediation

R311-500

Illegal Drug Operations Site Reporting
 and Decontamination Act,
 Decontamination Specialist
 Certification Program

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 33782
FILED: 06/23/2010

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 19, Chapter 6, Part 9, Illegal Drug Operations Site Reporting and Decontamination Act, was enacted in May 2004. The statute requires the Department of Environmental Quality (DEQ) Solid and Hazardous Waste Control Board to establish within the DEQ/ Division of Environmental Response and Remediation (DERR): a) certification standards for any private person, firm, or entity involved in the decontamination of contaminated property; and b) a process for revoking the certification of a decontamination specialist who fails to maintain the certification standards.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: A public comment period for Rule R311-500 was initiated 04/15/2005 through 05/16/2005. The DERR received formal comments from two individuals, Mr. Michael Rowzeé of Certified Decontamination and Mr. Bill Reyns of the Weber Morgan Health Department. These comments follow and are included verbatim without changes or summarization for the purposes of this five-year review. In order to maintain consistency within the public record, the original numbering of the comments and responses to comments is used in this five-year review. A number of comments pertained to Rule R392-600 Illegal Drug Operations Decontamination Standards adopted by the Department of Health and do not affect Rule R311-500. Responses were provided for all comments received. However, the comments pertaining to Rule R392-600 were forwarded to the Department of Health and are not included in this five-year review. The DERR also received a comment from Kerry Cramer of the Salt Lake Valley Health Department on 05/25/2010. Mr. Cramer's comment relates to Rule R311-500 and is also contained in this document verbatim without changes or summarization to ensure consistency with the public record. COMMENTS FROM MICHAEL ROWZEÉ dated 06/09/2005: COMMENT #1: I believe persons untrained in chemical decontamination lack the skills and knowledge necessary to correctly decontaminate clandestine meth labs. Industrial hygienists and chemists may have some knowledge about the subject, but decontamination is its own science. Hazwoper training provides useful safety information but is no substitute for a decontamination course. I recommend the Department of Environmental Quality require applicants to complete a recognized decontamination course prior to receiving their license. COMMENT #8: In the past, decontamination contractors did not need to know how to decontaminate to get their names on health department

lists. One health department has a written ordinance that requires applicants to describe their decontamination training. Someone could describe their training by saying, for example, "I took high school chemistry in the eleventh grade and got a "D." In such an instance, this person's name would have been added to the list. The decontamination specialist licensing program should not follow this precedent. The State requires asbestos decontamination personnel to complete a recognized training course. You should require chemical decontamination personnel also complete a recognized training course. COMMENT #9: The proposed requirements under Rule 311-500-5. Eligibility for Certification requires decontamination specialist applicants to pass a test prepared by the "executive secretary." I feel confident State tests for physicians, attorneys, plumbers, electricians, etc. were written by professionals from those sciences. I recommend the decontamination specialist test be written by persons trained and experienced in chemical decontamination. Under the new law, all government records about buildings that were meth labs will be expunged. A seller will not be required to disclose a home's meth lab history once the health department clears the house. The health departments and the people who later occupy the buildings rely totally on the skill and honesty of the decontamination specialist. I feel it is essential this Rule provide the Department of Environmental Quality the authority and guidelines to ensure licensed decontamination specialists are skilled, knowledgeable and capable in decontaminating clandestine meth labs. COMMENT #10: The comment is divided into three parts and recommends the following changes to R311-500-1. R311-500-1. Objective, Scope and Authority. (a) Objective. The Decontamination Specialist Licensing Program is designed to ensure individuals performing chemical testing and chemical decontamination are knowledgeable and skilled in the sciences of chemical decontamination and testing, and in the established decontamination standards. (b) Scope. These certification rules apply to individuals who, for hire, perform or teach confirmation sampling or decontamination of property that is on the contamination list specified in Section 19-6-903(3)(b) of the Illegal Drug Operations Site Reporting and Decontamination Act. (c) Authority. Section 19-6-906 directs the Department of Environmental Quality Solid and Hazardous Waste Control Board, in consultation with the Department of Health and local Health Departments, to make rules to establish within the Division of Environmental Response and Remediation: (1) certification standards for any private person, firm, or entity involved in the confirmation sampling or decontamination of contaminated property; and (2) a process for suspending or revoking the certification of a Decontamination Specialist for dishonesty, incompetence or failure to maintain certification standards. COMMENT #11: The comment is divided into eight parts and recommends the following changes to R311-500-2. R311-500-2. Definitions. (a) Refer to Section 19-6-902 for definitions not found in this rule. (b) For the purposes of the Decontamination Specialist Certification Program rules: (1) "Applicant" means any individual who applies to the Board to become a licensed Decontamination Specialist or to renew their license. (2) "Board" means the Solid and Hazardous Waste Control

Board. (3) "Certificate" means a document that evidences completion of a recognized course of instruction. (4) "Certification" means approval by the Board to perform or teach decontamination or confirmation sampling of contaminated property under Title 19 Chapter 6, Illegal Drug Operations Site Reporting and Decontamination Act. (5) "Certification Program" means the Division's process for issuing, denying, suspending and revoking Certification. (6) "Confirmation Sampling" means collecting samples and specimens during a preliminary assessment or upon completion of decontamination for the purpose of having the samples and specimens analyzed for chemical contaminants. (7) "Decontamination" means treatment or removal of contamination to reduce concentrations of hazardous chemicals below the decontamination standards defined in R392-600 and below hazardous levels as determined by the National Institute of Occupational Safety and Health (NIOSH). (#) "License" means the legal authority to perform or teach chemical decontamination or confirmation sampling. (#) "Recognized Course of Instruction" means a training course of instruction approved by the Board that fulfills the training requirement in R311-500-5(a)(2). COMMENT #12: The comment is divided into three parts and recommends the following changes to R311-500-5. R311-500-5. Eligibility for license. (a) There shall be three certification categories for licensed decontamination specialists. The three categories are: (1) Chemical decontamination; (2) Confirmation sampling; and (3) Chemical contamination instructor. (b) Applicants shall have certified in one or more category to be eligible for a license. (a) For initial and renewal licensing as a licensed decontamination specialist, an applicant shall: (1) Submit a completed application to the Board (Note: This paragraph [removed language] is vague and ambiguous and, therefore, unenforceable.); (2) Have successfully completed a recognized course of instruction in chemical decontamination or confirmation sampling; and (3) Successfully pass a certification examination developed and administered by the Board by achieving a score of 80% or better. (4) Pay a fee as determined by the Board. (b) Applicants who fail an initial examination may re-take the examination after thirty days. (c) Applicants who fail a re-examination may re-take the examination after one hundred, eighty days. (d) Licenses shall be renewed every three years. COMMENT #13: The comment is divided into three parts and recommends the following changes to R311-500-8. R311-500-8. Performance Standards. (a) All individuals performing or participating in decontamination activities for hire shall: (1) be certified prior to engaging in any decontamination activities for the purpose of removing the contaminated property from the list referenced in Section 19-6-903(3)(b) and display the certificate upon request; (2) report to the local Health Department the location of any property found to be chemically contaminated, or the subject of decontamination work by the Decontamination Specialist; (3) not commence or participate in decontamination work unless and until a work plan is approved by the local health department; (4) perform decontamination work in accordance with the workplan; (5) shall perform work meeting applicable local, state and federal laws, including certification and licensing requirements for

performing construction work; (5) comply with all safety training requirements in accordance with 29 CFR 1910.120; (9) submit a Final Report to the local Health Department, which includes an affidavit stating that the property has been decontaminated to the standards outlined in R392-600; (10) maintain a current address and phone number on file with the Division; (11) not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted; (12) not participate in any other activities regulated under R311-500 without meeting all requirements of that certification program.; and (13) shall ensure sheetrock, plaster, vinyl, linoleum, ceiling texture, ceiling tiles, and other materials that commonly contain asbestos, are tested for asbestos as required in R307-801-9, Utah Administrative Code prior to removal. (b) All individuals for hire performing or participating in confirmation sampling shall: (1) be certified and licensed prior to advertising for or accepting confirmation sampling work; (2) report to the local Health Department the location of any property that tests positive for chemical contamination; (3) follow scientifically sound and accepted sampling procedures; (4) submit a Final Report to the local Health Department regarding all post-decontamination sampling and tests; (5) maintain a current address and phone number on file with the Division; and (6) not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted. COMMENT #14: The comment suggests the following additions to R311-500. R311-500-# Certified Decontamination Instructor License (A) Recognized courses of instruction shall only be taught by licensed, certified decontamination instructors. (a) Persons requesting certification as a decontamination instructor shall: (1) Complete and submit a Certified Decontamination Instructor Application to the Board; (2) Provide a copy of the syllabus, lesson plan, student workbook, student handouts, and tests with answers to the Board; and (1) Pay an application fee required by the Board. (b) The determination to issue or deny a certified decontamination instructor license and status as a recognized course of instruction shall be made by the Board upon review of the application and accompanying training materials. The determination shall be made based on the applicant's decontamination training and experience, and instructor training and experience. (b) Upon approval of the application, the Board shall issue the applicant a Certified Decontamination Instructor License. (c) Upon approval of a course of instruction, the Board shall provide the applicant with a letter which states the course of instruction is granted the status of a Recognized Course of Instruction. (d) Proposed changes to a recognized course of instruction shall be provided to the Board for approval. The Board shall respond to all requests for proposed changes, and grant approval or disapproval in a letter. (e) Certified decontamination instructors shall obtain a completed Training Evaluation Form from each student completing the course of instruction. The completed training evaluation forms shall be provided to the Board within 14 days, along with a roster of all students completing the course. (f) Certified decontamination instructors who fail to provide a course roster and training evaluation forms within 14 days may have their instructor

certification suspended or revoked. (g) The Board should suspend or revoke the certified decontamination instructor license and status as a recognized course of instruction when a substantial number of training evaluation forms indicate the trainer or the course of instruction are of poor quality. (h) The Board may suspend or revoke a certified decontamination instructor license or recognized course of instruction status for other good cause based on substantial evidence the instructor violated Utah or Federal law, committed unsafe acts or created unsafe conditions. COMMENTS FROM BILL REYNS dated 06/09/2005: All comments were related to R392-600, Illegal Drug Operations Decontamination Standards adopted by the Department of Health and do not affect R311-500. COMMENT FROM KERRY CRAMER dated 05/25/2010: There are several decon specialists who have interpreted the current R311-500 to require reporting to the local health department only in cases of law enforcement involvement. (b) Scope. These certification rules apply to individuals who perform decontamination of property that is on the contamination list specified in Section 19-6-903(3)(b) of the Illegal Drug Operations Site Reporting and Decontamination Act. (a) A Certified Decontamination Specialist performing decontamination activities at contaminated property: (1) shall be certified prior to engaging in any decontamination activities for the purpose of removing the contaminated property from the list referenced in Section 19-6-903(3)(b) and display the certificate upon request; (2) shall report to the local Health Department the location of any property that is the subject of decontamination work by the Decontamination Specialist; If the decon activity is the result of a positive for meth by a CDS, local health departments are not being notified. If this language could be tightened up, life would be better for locals.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: JUSTIFICATION: Rule R311-500, Decontamination Certification Program Rules, should continue since Title 19, Chapter 6, Part 9, Illegal Drug Operations Site Reporting and Decontamination Act, requires the DEQ/DERR to develop and maintain a certification program for Decontamination Specialists. The statute also provides a mechanism for Certified Decontamination Specialists to help remove property from the contamination list. Title 19, Chapter 6, Part 9, has not been repealed. AGENCY DISAGREEMENT/RESPONSES: The following statements were made in response to the comments previously raised during the public comment period for R311-500 initiated 04/15/2005 through 05/16/2005. As mentioned above, the DERR received formal comments from two individuals, Mr. Michael Rowzeé of Certified Decontamination and Mr. Bill Reyns of the Weber Morgan Health Department. The responses to these comments are included below and are written verbatim without changes or summarization for the purposes of this five-year review. A number of comments pertained to Rule R392-600 Illegal Drug Operations Decontamination Standards, adopted by the Department of Health and do not affect Rules R311-500 and

R311-501. Responses were provided for all comments received. However, the comments pertaining to Rule R392-600 were forwarded to the Department of Health and neither the comments nor responses are included in this five-year review. The DERR also drafted a response to Mr. Kerry Cramer of the Salt Lake Valley Health Department for the comment he provided on 05/25/2010. RESPONSES TO MICHAEL ROWZEÉ dated 05/31/2005: RESPONSE #1: The Occupational Safety Health Agency (OSHA) Hazardous Waste Operation and Emergency Response (HAZWOPER 29 CFR 1910.120) standard is not intended to be a substitute for a decontamination course. Rather, this standard is included as a criterion of eligibility since health and safety training is essential for any party performing work in a clandestine drug laboratory. With respect to the second portion of the comment, the Division did not propose a formal training course in part, to help mitigate costs to applicants and to streamline the application and certification process. Furthermore, the training requirements, rules and general programmatic approach proposed in R311-500 and R311-501 are consistent with other rules and procedures established within the Division and provide a reasonable means to fulfill the requirements of the Illegal Drug Operations Site Reporting and Decontamination Act with the resources currently available. The statute requires the Division to develop certification standards for any private person, firm or entity involved in decontamination of contaminated property. The statute does not provide the authority to develop a licensing program. Individuals performing decontamination (as defined in the rules) should be knowledgeable of accepted procedures currently employed in the field of clandestine drug lab cleanups. The Division believes this can be done through independent study/training and demonstrated through a competency examination administered prior to certification. A Clandestine Drug Laboratory Certification Training Manual will be drafted and made available to all interested parties prior to the first examination noted in the rules. Among other items, the document will cover the critical elements of R392-600, Illegal Drug Operations Decontamination Standards (including preliminary assessment, workplan, decontamination, confirmation sampling and final reporting) and prepare an applicant for the examination noted in R311-500-5. The procedures set forth in the proposed rules do not preclude an applicant from obtaining additional training as necessary to pass the examination. RESPONSE #8: The proposed rules include eligibility requirements that must be met. Any individual may apply for certification by paying the applicable fees and submitting an application to the Executive Secretary to demonstrate that the applicant meets the eligibility requirements specified in R311-500-5 and will comply with the performance standards in R311-500-8 after receiving the certificate. The examination required in R311-500-5 is designed to demonstrate a minimum competency level in this field. An applicant will not be eligible for certification, and subsequently the Certified Decontamination Specialist List noted in R311-500-11, unless they pay the applicable fees, pass the subject examination, maintain current OSHA health and safety training and comply with the performance

standards defined in R311-500-8. With respect to the second portion of this comment relating to a recognized training course, please refer to comment response #1. RESPONSE #9: The examination noted in R311-500-5 will be based on the Decontamination Specialist Certification Program Training Manual as well as current information accepted in the field of clandestine drug laboratory cleanups. The Division will forward a draft copy of the Decontamination Specialist Certification Program Training Manual to interested stakeholders for feedback prior to finalizing the document and initiating the first examination. It is anticipated that stakeholders will consist of representatives from the local health departments and Department of Health as well as members of the real estate, law enforcement and engineering/consulting communities. With respect to the second portion of this comment relating to the skill, honesty and licensing of a decontamination specialist, please refer to comment responses #1, #5 and #8. RESPONSE #10: Please refer to comment responses #1, #2, #8 and #9. In accordance with the Illegal Drug Operations Site Reporting and Decontamination Act, certification is only applicable to individuals who perform decontamination of contaminated property on the list specified in Section 19-6-903(3)(b). The authority to make rules is outlined in Section 19-6-906(2) of the Illegal Drug Operations Site Reporting and Decontamination Act. The language proposed in this section was copied from the statute. RESPONSE #11: Section 19-6-906(2) of the Illegal Drug Operations Site Reporting and Decontamination Act requires the Division to develop certification standards for any private person, firm or entity involved in decontamination of contaminated property. The statute does not establish authority to develop a licensing program as requested in the comment. There were no proposed changes to this ["Board"] definition. [...completion of a recognized course of instruction] Please refer to comment response #1. In accordance with R311-500-3, the Executive Secretary (UST) of the Solid and Hazardous Waste Control Board is delegated authority to administer the Decontamination Specialist Certification Program. In addition, there is no recognized course of instruction as described in comment response #1 and therefore, "teach" is not added to this definition. Confirmation sampling requirements are addressed under R392-600 and R311-500. The Illegal Drug Operations Site Reporting and Decontamination Act requires the Division to develop certification standards for any private person, firm or entity involved in the decontamination of contaminated property and a process for revoking the certification of a decontamination specialist who fails to maintain the certification standards. The standards and revocation procedures are defined in R311-500 and R311-501. The definition for "Confirmation Sampling" proposed in R311-500 is generally consistent with the definition contained in R392-600 (effective date: May 2, 2005) adopted by the Department of Health. Changing the definition may make the proposed rule inconsistent with R392-600. The definition for "Decontamination" proposed in R311-500 is generally consistent with the definition contained in R392-600 (effective date: May 2, 2005) adopted by the Department of Health. Changing the definition may make the

proposed rule inconsistent with R392-600. ["License" and "Recognized Course of Instruction"...]. Please refer to comment responses #1 and #13. RESPONSE #12: Please refer to comment responses #1 to address the first portion of this comment relating to licensing. In addition, the Division did not propose tiers to the certification program since the program is designed to certify contractors, not create various categories of competencies. A single certification streamlines the application process, thereby allowing cleanups to proceed in a timely manner. The proposed rules do not prohibit a decontamination specialist from only offering services relating to confirmation sampling or decontamination or prohibit the "market" from developing and offering courses to assist individuals in preparing for the certification examination. Please refer to comment responses #1 to address the first portion of this comment relating to licensing. In addition, the Occupational Safety Health Agency (OSHA) Hazardous Waste Operation and Emergency Response (HAZWOPER 29 CFR 1910.120) standard is included as a criterion of eligibility since health and safety training is essential for any party performing work in a clandestine drug laboratory. The applicable safety training noted in the rule relates only to the requirements of 29 CFR 1910.120. Please refer to comment response #1 to address the first portion of this comment relating to a recognized training course. The percentage of correct answers required to pass the examination will be determined by the Executive Secretary prior to testing. With respect to the second portion of this comment, the proposed modifications (as noted by strikeouts and underlines) do not change the intent of R311-500 and R311-501. Certification must be renewed every two years to ensure a decontamination specialist remains current on the rules and proficient with sampling, decontamination and other applicable procedures and standards. RESPONSE #13: The performance standards specified in R311-500-8 are only applicable to a certified decontamination specialist performing work on property contained on the contamination list noted in the statute. The standards establish enforceable parameters for which work is conducted and set forth requirements that must be met in the event other workers assist in the cleanup. The decontamination specialist is encouraged to proactively work with the local health departments to ensure their concerns have been addressed prior to commencing with any activities relating to the decontamination of contaminated property. The additional modifications (as noted by strikeouts and underlines) do not change the intent of R311-500 and R311-501. The performance standards established in R311-500-8 state that a decontamination specialist must perform work meeting applicable local, state and federal laws. Should material need to be removed during decontamination, it must be assessed and characterized in advance to ensure compliance with applicable rules and regulations. Please refer to comment responses #21 and #24. The additional modifications (as noted by the underlines) do not change the intent of R311-500 and R311-501. RESPONSE #14: Please refer to comment responses #1, #8, #9, #13 and #21. RESPONSES TO BILL REYNS dated May 31, 2005: All comments were related to R392-600, Illegal Drug Operations Decontamination Standards adopted by the Department of Health

Health and do not affect R311-500. RESPONSE TO KERRY CRAMER dated June 1, 2010: The DERR will evaluate the concern raised by the Health Department when R311-500 is revised. As with any changes to the DERR rules, stakeholders will be consulted and input will be requested. The DERR will keep you informed of the timeline for changes to R311-500. It is anticipated that the rule will be revised once the 5-year review of the Decontamination Specialist Certification Program rules has been completed.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 ENVIRONMENTAL RESPONSE AND
 REMEDIATION
 FIRST FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Bill Rees by phone at 801-536-4167, by FAX at 801-536-4242, or by Internet E-mail at brees@utah.gov
- ◆ Karen Keller by phone at 801-536-4107, by FAX at 801-536-4242, or by Internet E-mail at karenkeller@utah.gov

AUTHORIZED BY: Amanda Smith, Executive Director

EFFECTIVE: 06/23/2010

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division has received no comments from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of these rules is to provide procedures for informal adjudicative proceedings compliant with UAPA. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 NATURAL RESOURCES
 PARKS AND RECREATION
 ROOM 116
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 07/01/2010

Natural Resources, Parks And
 Recreation
R651-101
 Adjudicative Proceedings

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 33808
 FILED: 07/01/2010

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Parks Board promulgated these rules, as authorized by Section 79-4-304, to establish procedures governing informal adjudicative proceedings before the Utah Division of Parks and Recreation, as required by the Utah Administrative Procedures Act (UAPA), Section 63G-4-203 et seq.

Natural Resources, Parks And
 Recreation
R651-409

Minimum Amounts of Liability
 Insurance Coverage for an Organized
 Practice or Sanctioned Race

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 33790
 FILED: 06/29/2010

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 41-22-29(5) states: "In accordance with Title 63G, Chapter 3, Utah Administrative

Rulemaking Act, the Division shall make rules specifying the minimum amounts of liability coverage for an organized practice or sanctioned race". The Division has interpreted that as specific instruction for the Board to make a rule establishing liability coverage amounts for activities identified in Section 41-22-29. Rule R651-409 is intended to do that.

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 were received during the past review, nor have any been received concerning this rule in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In addition to being specifically required in statute, the rule protects the state from risk by requiring insurance for very young off-highway vehicle operators operating under controlled and permitted conditions. This protection could prove invaluable in the unfortunate event of an accident occurring during a sanctioned event or practice. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 NATURAL RESOURCES
 PARKS AND RECREATION
 ROOM 116
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

AUTHORIZED BY: Fred Hayes, Acting Operations Deputy Director

EFFECTIVE: 06/29/2010

**Natural Resources, Parks And
 Recreation
 R651-634
 Nonresident OHV User Permits and
 Fees**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION
 DAR FILE NO.: 33791
 FILED: 06/29/2010**

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 41-22-35(4) states: "In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Board shall make rules establishing: (a) procedures for: (i) the payment of off-highway vehicle user fees; and (ii) the display of a decal on an off-highway vehicle as required under Subsection (3)(b). (b) acceptable evidence indicating compliance with Subsection (1); (c) eligibility requirements for reciprocal operating privileges for nonresident users; and (c) eligibility for scheduled competitive events or other events under Subsection (1)(b) (ii)". The Division has interpreted that as specific instruction for the Board to make a rule addressing the elements of Subsection 41-22-35(4). Rule R651-634 is intended to do that.

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 were received during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides administrative guidance (as specifically required by statute) for the administration of the Nonresident Off-highway Vehicle (OHV) Permit program. This rule protects the taxing authority of the Counties while enabling the State to generate revenue in support of the OHV Program. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 NATURAL RESOURCES
 PARKS AND RECREATION
 ROOM 116
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

AUTHORIZED BY: Fred Hayes, Acting Operations Deputy Director

EFFECTIVE: 06/29/2010

**Natural Resources, Wildlife Resources
R657-6
Taking Upland Game**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 33784
FILED: 06/28/2010

**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: Under Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to regulate and prescribe the means by which wildlife may be taken. The statute requires the Wildlife Board to set season dates, permit numbers, and control measures that ensure the growth and continuation of Utah's wildlife.

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 supporting or opposing Rule R657-6 were received since 07/08/2005, when the rule was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-6 provides the procedures, standards, and requirements for taking upland game. The provisions adopted in this rule are effective in providing the standards and requirements for taking upland game birds. Continuation of this rule is necessary for continued success of this program.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: James Karpowitz , Director

EFFECTIVE: 06/28/2010

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. 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(12), 63G-3-303, and Sections R15-4-5a and 5b.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

Career Service Review Board

Administration

No. 33592 (AMD): R137-1. Grievance Procedure Rules

Published: 05/15/2010

Effective: 07/01/2010

No. 33593 (AMD): R137-2. Government Records Access and Management Act

Published: 05/15/2010

Effective: 07/01/2010

Commerce

Occupational and Professional Licensing

No. 33584 (AMD): R156-24b. Physical Therapy Practice Act Rule

Published: 05/15/2010

Effective: 06/21/2010

No. 33566 (AMD): R156-56. Utah Uniform Building Standard Act Rules

Published: 05/15/2010

Effective: 07/01/2010

No. 33585 (AMD): R156-78. Vocational Rehabilitation Counselors Licensing Act Rule

Published: 05/15/2010

Effective: 06/21/2010

Real Estate

No. 33565 (AMD): R162-3. License Status Change

Published: 05/15/2010

Effective: 06/21/2010

No. 33563 (AMD): R162-4-1. Records and Copies of Documents

Published: 05/01/2010

Effective: 06/16/2010

Securities

No. 33580 (AMD): R164-6-1g. Dishonest or Unethical Business Practices

Published: 05/15/2010

Effective: 06/22/2010

Environmental Quality

Administration

No. 33589 (AMD): R305-5. Health Reform -- Health Insurance Coverage in DEQ State Contracts -- Implementation

Published: 05/15/2010

Effective: 06/23/2010

Governor

Criminal and Juvenile Justice (State Commission on)

No. 33586 (NEW): R356-101. Judicial Nominating Commissions

Published: 05/15/2010

Effective: 07/01/2010

Economic Development, Pete Suazo Utah Athletic Commission

No. 33460 (AMD): R359-1-508. Hepatitis B Surface Antigen (HBsAg) and Hepatitis C Virus (HCV) Antibody Testing

Published: 04/01/2010

Effective: 07/01/2010

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 33600 (AMD): R414-3A-9. Reimbursement for Services

Published: 05/15/2010

Effective: 06/21/2010

NOTICES OF RULE EFFECTIVE DATES

No. 33579 (AMD): R414-14A. Hospice Care
Published: 05/15/2010
Effective: 06/21/2010

No. 33571 (REP): R414-33C. Targeted Case Management
for the Homeless
Published: 05/15/2010
Effective: 07/01/2010

No. 33572 (AMD): R414-302. Eligibility Requirements
Published: 05/15/2010
Effective: 07/01/2010

No. 33573 (AMD): R414-304-9. A, B, and D Institutional
Medicaid and Family Institutional Medicaid Income
Deductions
Published: 05/15/2010
Effective: 07/01/2010

No. 33574 (AMD): R414-305. Resources
Published: 05/15/2010
Effective: 07/01/2010

No. 33594 (AMD): R414-401. Nursing Care Facility
Assessment
Published: 05/15/2010
Effective: 07/01/2010

No. 33596 (AMD): R414-504. Nursing Facility Payments
Published: 05/15/2010
Effective: 07/01/2010

Human Resource Management

Administration

No. 33601 (AMD): R477-1. Definitions
Published: 05/15/2010
Effective: 07/01/2010

No. 33602 (AMD): R477-2. Administration
Published: 05/15/2010
Effective: 07/01/2010

No. 33614 (AMD): R477-3. Classification
Published: 05/15/2010
Effective: 07/01/2010

No. 33603 (AMD): R477-4. Filling Positions
Published: 05/15/2010
Effective: 07/01/2010

No. 33604 (AMD): R477-5. Employee Status and Probation
Published: 05/15/2010
Effective: 07/01/2010

No. 33605 (AMD): R477-6. Compensation
Published: 05/15/2010
Effective: 07/01/2010

No. 33606 (AMD): R477-7. Leave
Published: 05/15/2010
Effective: 07/01/2010

No. 33607 (AMD): R477-8. Working Conditions
Published: 05/15/2010
Effective: 07/01/2010

No. 33608 (AMD): R477-9. Employee Conduct
Published: 05/15/2010
Effective: 07/01/2010

No. 33609 (AMD): R477-10. Employee Development
Published: 05/15/2010
Effective: 07/01/2010

No. 33610 (AMD): R477-11. Discipline
Published: 05/15/2010
Effective: 07/01/2010

No. 33611 (AMD): R477-12. Separations
Published: 05/15/2010
Effective: 07/01/2010

No. 33612 (AMD): R477-14. Substance Abuse and Drug-
Free Workplace
Published: 05/15/2010
Effective: 07/01/2010

No. 33613 (AMD): R477-15. Workplace Harassment
Prevention Policy and Procedure
Published: 05/15/2010
Effective: 07/01/2010

Insurance

No. 33591 (AMD): R590-155. Disclosure of Life and Health
Guaranty Association Limitations
Published: 05/15/2010
Effective: 06/21/2010

No. 33558 (REP): R590-175. Basic Health Care Plan Rule
Published: 05/01/2010
Effective: 06/21/2010

Public Safety

Fire Marshal

No. 33575 (AMD): R710-9. Rules Pursuant to the Utah Fire
Prevention Law
Published: 05/15/2010
Effective: 07/01/2010

Public Service Commission

Administration

No. 33472 (REP): R746-331. Determination of Exemption of Mutual Water Corporations

Published: 04/15/2010

Effective: 06/30/2010

Transportation

Operations, Construction

No. 33587 (NEW): R916-6. Drug and Alcohol Testing in State Construction Contracts

Published: 05/15/2010

Effective: 06/21/2010

Program Development

No. 33445 (REP): R926-7. Scenic Byways

Published: 04/01/2010

Effective: 06/21/2010

No. 33446 (NEW): R926-13. Designated Scenic Byways

Published: 04/01/2010

Effective: 06/21/2010

No. 33447 (NEW): R926-14. Utah Scenic Byway Program Administration; Scenic Byways Designation, De-designation, and Segmentation Processes

Published: 04/01/2010

Effective: 06/21/2010

Workforce Services

Employment Development

No. 33597 (AMD): R986-200-247. Utah Back to Work Pilot Program (BWP)

Published: 05/15/2010

Effective: 07/01/2010

No. 33599 (AMD): R986-900-902. Options and Waivers

Published: 05/15/2010

Effective: 07/01/2010

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, 2010 through July 01, 2010. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules 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).

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/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Administrative Rules</u>					
R15-4	Administrative Rulemaking Procedures	33437	NSC	03/29/2010	Not Printed
<u>Archives</u>					
R17-7-3	Archives/ Research Room/Access to Records	33320	AMD	05/17/2010	2010-3/12
<u>Debt Collection</u>					
R21-3	Debt Collection Through Administrative Offset	33564	NSC	07/01/2010	Not Printed
<u>Facilities Construction and Management</u>					
R23-2-15	Negotiation and Appointment	33766	NSC	07/01/2010	Not Printed
R23-26	Dispute Resolution	33360	5YR	02/01/2010	2010-4/79
<u>Finance</u>					
R25-7-10	Reimbursement for Transportation	33302	AMD	04/21/2010	2010-3/12
<u>Records Committee</u>					
R35-1-4	Committee Minutes	33335	AMD	05/17/2010	2010-4/16
R35-1-4	Committee Minutes	33436	NSC	05/17/2010	Not Printed
R35-1a	State Records Committee/Definitions	33399	5YR	02/22/2010	2010-6/35
<u>Risk Management</u>					
R37-1	Risk Management General Rules	33390	AMD	06/01/2010	2010-5/2
R37-2	Risk Management State Workers' Compensation Insurance Administration	33392	NSC	03/10/2010	Not Printed
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	33393	AMD	06/01/2010	2010-6/6
AGRICULTURE AND FOOD					
<u>Animal Industry</u>					
R58-7	Livestock Markets, Satellite Video Livestock Auction Market, Livestock Sales, Dealers and Livestock Market Weighpersons	33326	5YR	01/14/2010	2010-3/87
R58-10	Meat and Poultry Inspection	33329	5YR	01/14/2010	2010-3/87
R58-17	Aquaculture and Aquatic Animal Health	33327	5YR	01/14/2010	2010-3/88
R58-20-5	Facilities	33217	AMD	01/27/2010	2009-24/4
R58-21	Trichomoniasis	33340	5YR	01/27/2010	2010-4/79
<u>Conservation and Resource Management</u>					
R64-1	Agriculture Resource and Development Loans (ARDL)	33305	5YR	01/07/2010	2010-3/89
<u>Plant Industry</u>					
R68-7	Utah Pesticide Control Act	33080	AMD	01/04/2010	2009-22/5
R68-12	Quarantine Pertaining to Mint Wilt	33677	5YR	05/27/2010	2010-12/69
R68-20	Utah Organic Standards	33315	5YR	01/12/2010	2010-3/89

Regulatory Services

R70-101	Bedding, Upholstered Furniture and Quilted Clothing	33074	AMD	01/11/2010	2009-22/11
R70-101	Bedding, Upholstered Furniture and Quilted Clothing	33542	5YR	04/07/2010	2010-9/41

ALCOHOLIC BEVERAGE CONTROL

Administration

R81-1-11	Multiple-Licensed Facility Storage and Service	33153	AMD	01/26/2010	2009-24/5
R81-1-26	Criminal History Background Checks	33154	AMD	01/26/2010	2009-24/6
R81-3-13	Operational Restrictions	33152	AMD	01/26/2010	2009-24/8
R81-4D-1	Licensing	33155	AMD	01/26/2010	2009-24/10
R81-4D-14	Reporting Requirement	33156	AMD	01/26/2010	2009-24/11
R81-4E	Resort Licenses	33157	NEW	01/26/2010	2009-24/12
R81-4E-4	Insurance	33339	NSC	02/11/2010	Not Printed
R81-7-1	Application Guidelines	33469	AMD	05/26/2010	2010-8/6
R81-10B-1	Application Guidelines	33504	AMD	05/26/2010	2010-8/7

CAPITOL PRESERVATION BOARD (STATE)

Administration

R131-1	Procurement of Architectural and Engineering Services	33363	EXT	02/08/2010	2010-5/73
R131-1	Procurement of Architectural and Engineering Services	33544	5YR	04/07/2010	2010-9/41
R131-1	Procurement of Architectural and Engineering Services	33543	NSC	04/26/2010	Not Printed
R131-2	Capitol Hill Complex Facility Use	33364	EXT	02/08/2010	2010-5/73
R131-2	Capitol Hill Complex Facility Use	33545	5YR	04/07/2010	2010-9/42
R131-2-11	Fees and Charges During Legislative Session	33151	AMD	01/07/2010	2009-23/6
R131-7	State Capitol Preservation Board Master Planning Policy	33365	EXT	02/08/2010	2010-5/74
R131-7	State Capitol Preservation Board Master Planning Policy	33547	5YR	04/07/2010	2010-9/43
R131-7	State Capitol Preservation Board Master Planning Policy	33546	NSC	04/26/2010	Not Printed
R131-8	CPB Facilities and Grounds: Maintenance of Aesthetics	33405	EXT	02/24/2010	2010-6/43
R131-8	CPB Facilities and Grounds: Maintenance of Aesthetics	33549	5YR	04/07/2010	2010-9/43
R131-8	CPB Facilities and Grounds: Maintenance of Aesthetics	33548	NSC	04/26/2010	Not Printed
R131-9	State Capitol Preservation Board Art Program and Policy	33406	EXT	02/24/2010	2010-6/43
R131-9	State Capitol Preservation Board Art Program and Policy	33551	5YR	04/07/2010	2010-9/44
R131-9	State Capitol Preservation Board Art Program and Policy	33550	NSC	04/26/2010	Not Printed
R131-14	Parking on Capitol Hill	33298	NEW	02/22/2010	2010-2/4

CAREER SERVICE REVIEW BOARD

Administration

R137-1	Grievance Procedure Rules	33592	AMD	07/01/2010	2010-10/4
R137-2	Government Records Access and Management Act	33593	AMD	07/01/2010	2010-10/16

COMMERCE

Administration

R151-1	Department of Commerce General Provisions	33336	5YR	01/25/2010	2010-4/80
R151-46b	Department of Commerce Administrative Procedures Act Rules	33150	AMD	01/07/2010	2009-23/7
R151-46b-5	General Provisions	33149	AMD	01/07/2010	2009-23/11

RULES INDEX

Consumer Protection

R152-1	Utah Division of Consumer Protection: "Buyer Beware List"	33583	5YR	04/28/2010	2010-10/165
R152-1-1	Purposes, Policies and Rules of Construction	33168	AMD	01/21/2010	2009-24/16
R152-11-1	Purposes, Rules of Construction	33169	AMD	01/21/2010	2009-24/17
R152-11-1	Purposes, Rules of Construction	33238	AMD	02/08/2010	2010-1/6
R152-11-5	Repairs and Services	33239	AMD	02/08/2010	2010-1/7
R152-39	Child Protection Registry Rules	33598	5YR	04/29/2010	2010-10/165

Occupational and Professional Licensing

R156-1	General Rule of the Division of Occupational and Professional Licensing	33227	AMD	03/25/2010	2009-24/18
R156-15	Health Facility Administrator Act Rules	33560	AMD	06/07/2010	2010-9/4
R156-17b	Pharmacy Practice Act Rule	33402	5YR	02/23/2010	2010-6/35
R156-24b	Physical Therapy Practice Act Rule	33584	AMD	06/21/2010	2010-10/17
R156-31b-701a	Delegation of Nursing Tasks in a School Setting	33266	AMD	03/29/2010	2010-1/9
R156-37	Utah Controlled Substances Act Rules	33665	NSC	06/14/2010	Not Printed
R156-37-301	License Classifications - Restrictions	33264	AMD	02/08/2010	2010-1/11
R156-38a	Residence Lien Restriction and Lien Recovery Fund Rule	33307	5YR	01/07/2010	2010-3/90
R156-38b	State Construction Registry Rules	33366	5YR	02/08/2010	2010-5/69
R156-47b	Massage Therapy Practice Act Rule	33293	AMD	02/22/2010	2010-2/6
R156-47b-102	Definitions	33400	NSC	03/10/2010	Not Printed
R156-55d	Utah Construction Trades Licensing Act Burglar Alarm Licensing Rule	33409	5YR	02/25/2010	2010-6/36
R156-56	Utah Uniform Building Standard Act Rules	33566	AMD	07/01/2010	2010-10/21
R156-60c	Professional Counselor Licensing Act Rule	33306	5YR	01/07/2010	2010-3/90
R156-73-603	Standards for Practice of Animal Chiropractic	33712	NSC	07/01/2010	Not Printed
R156-77-102	Definitions	33263	AMD	02/08/2010	2010-1/12
R156-78	Vocational Rehabilitation Counselors Licensing Act Rule	33585	AMD	06/21/2010	2010-10/54
R156-78B-4	General Provisions	33175	AMD	01/21/2010	2009-24/28
R156-79	Hunting Guides and Outfitters Licensing Act Rule	33265	AMD	02/08/2010	2010-1/14

Real Estate

R162-2-2	Licensing Procedure	33526	AMD	05/25/2010	2010-8/8
R162-2c	Utah Residential Mortgage Practices and Licensing Rules	33372	NEW	04/12/2010	2010-5/7
R162-2c-203	Utah-Specific Education Certification	33506	NSC	04/14/2010	Not Printed
R162-2c-204	License Renewal	33470	NSC	04/14/2010	Not Printed
R162-2c-301	Unprofessional Conduct	33471	NSC	04/14/2010	Not Printed
R162-2c-401	Administrative Proceedings	33507	NSC	04/14/2010	Not Printed
R162-3	License Status Change	33565	AMD	06/21/2010	2010-10/56
R162-4-1	Records and Copies of Documents	33563	AMD	06/16/2010	2010-9/9
R162-101	Authority and Definitions	33158	AMD	01/27/2010	2009-24/29
R162-102	Application Procedures	33180	AMD	01/27/2010	2009-24/30
R162-104	Experience Requirement	33224	AMD	01/27/2010	2009-24/33
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R590-88	Prohibited Transactions between Agents And Unauthorized Multiple Employer Trusts	33714	NSC	07/01/2010	Not Printed
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R861-1A-42	Waiver of Penalty and Interest for Reasonable Cause Pursuant to Utah Code Ann. Section 59-1-401	33637	NSC	05/27/2010	Not Printed
R861-1A-43	Electronic Meetings Pursuant to Utah Code Ann. Section 52-4-207	33231	AMD	01/21/2010	2009-24/90

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R865-9I-7	Change of Status as Resident or Nonresident Pursuant to Utah Code Ann. Section 59-10-120	33384	AMD	04/08/2010	2010-5/51
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R994-406-203	Waiver of Recovery of Nonfault Overpayments	33355	AMD	04/01/2010	2010-4/62

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ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

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