

# 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

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## Health Health Care Financing, Coverage and Reimbursement Policy

### Notice for July 2011 Medicaid Rate Changes

Effective July 1, 2011, Utah Medicaid will adjust its rates consistent with legislative intent and appropriations. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. Nursing home rate changes will include adjustments to the flat rate, fair rental value and case mix components consistent with adopted payment methodology. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>

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## Health Health Care Financing, Coverage and Reimbursement Policy

### Medical Education and Supplemental State Teaching Hospital Payments

The Division of Medicaid and Health Financing is submitting changes to the Medicaid State Plan. Attachment 4.19-A, 11-007-UT Medical Education and Supplemental State Teaching Hospital Payments, proposes the Graduate Medical Education payment pool for state fiscal year 2012 to be \$6,336,524, amends the calculation for supplemental payments to the state teaching hospital up to the Medicare upper payment limit to include inflation and utilization factors, and removes the 90 percent interim payment approach. These changes are being made to reflect the GME funding levels and based upon discussions with the state teaching hospital.

It is anticipated that, subject to the upper payment limit, total annual expenditures will be similar to current levels for the supplemental payments and for graduate medical education payments.

This proposed change, if approved, becomes effective on July 1, 2011. The proposed changes are pending Centers for Medicare and Medicaid Services approval.

*A copy of the changes may be obtained from Craig Devashrayee (801-538-6641), or by writing the Technical Writing Unit, Utah Department of Health, P.O. Box 143102, Salt Lake City, UT 84114-3102. Comments are welcome at the same address. Copies of the changes are also available at local county health department offices.*

**End of the Special Notices Section**



# EXECUTIVE DOCUMENTS

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

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

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## Governor's Executive Order EO/005/2011: Utah Futures Steering Committee

### EXECUTIVE ORDER

Utah Futures Steering Committee

**WHEREAS**, UtahFutures.org is a web-based advisement tool that allows students to make education and career plans online, manage Student Education Occupation Plans (SEOP) in public schools, and serve as an electronic education and career portfolio students may access and use throughout their lives;

**WHEREAS**, UtahFutures.org was launched through a memorandum of understanding entered into by the Utah State Office of Education, the Utah State Board of Regents, the Utah Division of Workforce Services, the Utah State Office of Rehabilitation, GEAR UP and the Utah State Library;

**WHEREAS**, UtahFutures.org is currently overseen by a committee comprised of representatives of the agencies mentioned above, as well as representatives from the Utah College of Applied Technology and the Utah Education Network, named hereafter the Utah Futures Working Group;

**WHEREAS**, the Governor's Education Excellence Commission has recommended, as part of its "Vision 2020: 8 Proposals for 2011", that the State "improve internal alignments within government to align education with economic development objectives";

**WHEREAS**, UtahFutures.org presents an excellent opportunity to align the State's educational efforts with our economic development objectives;

**WHEREAS**, in order to build upon the solid foundation UtahFutures.org possesses, the State should expand the membership of the steering committee to more dynamically showcase and advance the Utah Futures database, strategically engage industry and business entities more fully within the Utah Futures system, and create a more enticing interface for UtahFutures.org;

**NOW, THEREFORE**, I, Gary R. Herbert, Governor of the State of Utah, by the authority vested in me by the laws and Constitution of the State, do hereby order that:

1. By June 1, 2011, the Utah Futures steering committee shall be formed, comprised of eleven members:
  - (a) the State Superintendent of Public Schools or the State Superintendent of Public School's designee;

- (b) the Commissioner of Higher Education or the Commissioner of Higher Education's designee;
  - (c) the Executive Director of the Department of Workforce Services or the Executive Director's designee;
  - (d) the Executive Director of the Department of Community and Culture or the Executive Director's designee;
  - (e) a representative of GEAR UP, selected by GEAR UP;
  - (f) a representative of the Utah Education Network, selected by the Utah Education Network;
  - (g) the President of the Utah College of Applied Technology or the President of the Utah College of Applied Technology's designee;
  - (h) a student body president from one of Utah's institutions of higher learning, selected by the Governor;
  - (i) a representative from one of Utah's public high schools, selected by the Governor; and
  - (j) four representatives of the business community, selected by the Governor.
2. The student representatives shall serve a one year term;
  3. The business representatives will be selected by the Governor to serve four-year terms, except that the initial terms shall be staggered;
  4. Two members of the Utah State Legislature may serve on the steering committee as non-voting, ex officio members. Legislative members may be selected by the Governor from a list of three names provided by the Speaker of the House and a list of three names provided by the President of the Senate;
  5. The Governor shall appoint the Chair of the steering committee;
  6. All members of the steering committee serve at the will of the Governor and may be removed without cause. When a vacancy occurs in the membership of the steering committee, the Governor shall appoint a replacement;
  7. The steering committee will be staffed by the Utah Department of Workforce Services with continued technical support provided by the Utah Commissioner of Higher Education/UHEAA and other participating agencies as needed;
  8. The steering committee shall meet as often as needed in order to accomplish its objectives, but no less frequently than quarterly;
  9. The steering committee shall provide direction to, and receive reports from, the Utah Futures working group, comprised of staff members from the public agencies assigned to the project and the UtahFutures Project Manager who serves as principle staff to the steering committee;
  10. The working group shall coordinate efforts to fulfill the responsibilities assigned by the steering committee, as well as utilize their expertise in supporting and advancing UtahFutures.org;
  11. The steering committee shall establish a plan that includes, but is not limited to:
    - (a) analytics that measure the effectiveness of the site;
    - (b) dashboard analytics to measure key performance indicators of economic development and education achievement, including:
      - (i) Utah state revenue indicators, including gross state product information, wage information and tax revenue information;
      - (ii) Utah occupational projections, including the Utah Occupational Projections Report generated by the Utah Department of Workforce Services; and

(iii) Utah occupational results, including occupational categories, number of jobs filled, length of unemployment, and education background to the extent such information can be feasibly gathered;

(c) include proven technologies in the areas of enterprise portal, social media/on-line interaction and collaboration, video streaming, education, and career planning applications;

(d) the ability to act as a one-stop exploration and planning system for career, high school courses, college major, financial aid, and other related transitions;

(e) explore the feasibility and desirability of a more streamlined process for completing a college admission application;

(f) have the ability to adapt to a user's needs as feasible;

(g) provide national and local information to assist the user in making informed decisions regarding the user's education plans and ultimate career goals; and

(h) provide multiple assessments of a program user to determine the best education and career options for the user.

12. The Utah Futures steering committee shall report the results of the program in an annual report to the Governor no later than October 1 of each year. The steering committee shall report to the Legislature's Education Interim Committee or the Public Education Subcommittee at least annually and, more frequently, as reasonably requested by the Utah State Legislature. The report shall include information that demonstrates the effectiveness of the program including:

(i) the total number of users;

(ii) the total number of active and completed program profiles;

(iii) the number of repeat users of the program, including the number of visits per user;

(iv) the average length of stay per visit;

(v) the activities performed by users; and

(vi) program usage by employees.

13. The Utah Futures steering committee shall be in existence until May 31, 2014, and will dissolve automatically on June 1, 2014, unless extended by future executive order.

**IN WITNESS, WHEREOF**, I have hereunto set my hand and caused to be affixed the great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, on this, the 17th day of May 2011.

(State Seal)

**Gary R. Herbert**  
Governor

**Attest:**

**Greg Bell**  
Lieutenant Governor

EO/005/2011



## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between May 17, 2011, 12:00 a.m., and June 01, 2011, 11:59 p.m. are included in this, the June 15, 2011 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 July 15, 2011. 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 October 13, 2011, 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.

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

## Administrative Services, Purchasing and General Services

### R33-11

## State Surplus Property Disposal

### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 34884

FILED: 05/31/2011

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 130 passed during the 2011 General Session transferred the Utah State Agency for Surplus Property (USASP) to the Division of Purchasing and General Services, under the Department of Administrative Services from the Division of Fleet Operations. (DAR NOTE: S.B. 130 (2011) was effective 05/10/2011.)

SUMMARY OF THE RULE OR CHANGE: This rule enacts the provisions of the state surplus property program now assumed by the Division of Purchasing and General Services; it also makes technical changes. (DAR Note: The associated repeals of state surplus provisions from the Division of Fleet Operations' rules can be found in the June 1, 2011, issue of the Utah State Bulletin under DAR Nos. 34780, 34781, 34872, and 34783.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63A-2-401(2)(a)

#### ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There is no impact to the state budget. The new rule simply reflects the transfer of the surplus property program to the Division of Purchasing and General Services.
- ◆ LOCAL GOVERNMENTS: There is no impact to local government budgets. The new rule simply reflects the transfer of the surplus property program to the Division of Purchasing and General Services.
- ◆ SMALL BUSINESSES: There is no impact to small businesses. The new rule simply reflects the transfer of the surplus property program to the Division of Purchasing and General Services.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to persons other than small businesses, businesses, or local government entities. The new rule simply reflects the transfer of the surplus property program to the Division of Purchasing and General Services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs associated for compliance. The new rule simply reflects the transfer of the surplus property program to the Division of Purchasing and General Services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business. The new rule simply reflects the transfer of the surplus property program to the Division of Purchasing and General Services.

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

ADMINISTRATIVE SERVICES  
PURCHASING AND GENERAL SERVICES  
ROOM 3150 STATE OFFICE BLDG  
450 N STATE ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Kent Beers , Director

#### R33. Administrative Services, Purchasing and General Services.

##### R33-11. Surplus Property.

##### R33-11-1. State Surplus Property Disposal.

###### 11-101. Purpose.

This rule sets forth policies and procedures which govern the acquisition and disposition of state and federal surplus property. It applies to all state and local public agencies and eligible non-profit educational and health institutions when dealing with federal surplus property. It also applies to all state agencies unless specifically exempted by law and to the general public when dealing with state surplus property.

###### 11-102. Authority.

Under the provisions of Title 63A, Chapter 2, Part 4, the Utah State Agency for Surplus Property (USASP) within the Division of Purchasing and General Services, under the Department of Administrative Services is responsible for operating both a state and a federal surplus property program. The standards and procedures governing the operation of these two programs are found in two separate State Plans of Operation, one for state surplus property and a second plan for federal surplus property, the latter being a contract between the state and federal government. The State Plans of Operation may be reviewed at the USASP.

11-103. Definitions.

(1) As used in this section "Personal handheld electronic device":

(a) means an electronic device that is designed for personal handheld use and permits the user to store or access information, the primary value of which is specific to the user of the device; and

(b) includes a mobile phone, pocket personal computer, personal digital assistant, wireless, or similar device.

11-104. Procedures.

(1) State-owned personal property shall not be destroyed, sold, transferred, traded-in, traded, discarded, donated or otherwise disposed of without first submitting a properly completed form SP-1 to and receiving authorization from the USASP.

This rule applies to and includes any residue that may be remaining from agency cannibalization of property.

(2) When a department or agency of state government determines that state-owned personal property is in excess to current needs, they will make such declaration using Form SP-1. State-owned personal property shall not be processed by the USASP unless the appropriate form is executed.

(3) A standard form SP-3 is required when it is determined that state-owned personal property should be abandoned and destroyed. The SP-3 is generated by the USASP after receiving a form SP-1 and reviewing the property being disposed of by the agency.

(4) State-owned information technology equipment may be transferred directly to public institutions, such as schools and libraries by the owning agency. However, a form SP-1 must still be completed and forwarded to the USASP to account for the transfer of the equipment. In such cases, the USASP will not assess a fee. Similarly, the USASP is authorized to donate computer equipment received as surplus property from agencies to schools that have submitted requests for computer equipment directly to the USASP.

(5) Pursuant to the provisions of section 63A-2-407, state-owned information technology equipment may be transferred directly to Non-profit entities for distribution to, and use by, persons with a disability as defined in subsections 62A-5-101(9). However, interagency transfers and sales of surplus property to state and local agencies within the 30-day period under section 63A-2-406 shall have priority over transfers under this subsection. The 30-day holding period may be waived if shown to be in the best interest of the state.

(6) Requests for state-owned information technology equipment from non-profit entities shall be:

(a) Submitted, in writing, on the non-profit entity's official letterhead, to the Department of Human Services, Division of Services for People with Disabilities (DSPD);

(b) Reviewed and approved by DSPD and forwarded to the USASP manager to properly track and arrange for distribution.

(7) State agencies transferring state-owned information technology equipment to non-profit entities for distribution to, and use by persons with a disability as defined in subsections 62A-5-101(9), shall provide the USASP with completed SP-1 forms in order to account for the transfer of said equipment. In such cases, the USASP will not assess a fee to the donating agency.

(8) Pursuant to the provisions of subsection 63A-2-407(3), the USASP shall prepare an annual report to DSPD containing the names of non-profit entities that received state-

owned information technology equipment under subsection 63A-2-407(1), and the types and amounts of equipment received.

(9) Prior to submitting information technology equipment to Surplus Property, or donating it directly to the public institutions, agencies shall delete all information from all storage devices. Information shall be deleted in such a manner as to not be retrievable by data recovery technologies.

(10) Federal surplus property is not available for sale to the general public, on a day-to-day basis. Donation of federal surplus property shall be administered in accordance with the procedures identified in the State Plan of Operation for the Federal Property Assistance Program. Public auctions of federal surplus property are authorized under certain circumstances and conditions. The USASP Manager shall coordinate such auctions when deemed necessary or appropriate. Federal surplus property auctions are primarily conducted online, but are regulated and accomplished by the U.S. General Services Administration.

(11) This section sets forth policy and procedure, which governs the sale of personal handheld electronic devices to a user who is provided such a device by an agency, and who subsequently leaves or changes employment. These personal handheld electronic devices usually rely on technology that is rapidly changing, resulting in the devices becoming continuously outdated as more capable devices are offered; therefore, their value depreciates significantly over the period of their service. Their usefulness is generally tied to a service contract with a service provider.

(a) Personal handheld electronic device and related accessories and software may be purchased by the assigned user upon a change in employment status including termination, retirement, or transfer to another agency within state government, provided that the issuing agency is not obligated to continue the terms of the service contract.

(b) Purchase of a handheld device is exempt from the requirements of related party transactions under Subsection R33-11-111-106.

(c) Prior to a purchase of a handheld device, the following requirements shall be completed in substantially the following order:

(i) the agency that assigned or provided the personal handheld electronic device shall:

(A) authorize, in writing to USASP, the sale to the assigned user in lieu of exchange or surplus;

(B) submit an SP-1 to USASP with a description of the items to be included in the sale of the personal handheld electronic device including the make, model, serial number, specifications (if available), list of accessories, software; and

(C) remove, or cause to be removed, from the personal handheld electronic device any:

(I) software owned or licensed by the agency as required by the software license agreement;

(II) information that is classified as protected, private, or controlled under the Title 63G, Chapter 2, Government Records, Access and Management Act; and

(III) State-owned records and data.

(D) Obtain a written certification from the Department of Technology Services that state-owned records and data have been purged from the device.

(E) Ensure in writing that the service contract is null and void to the issuing agency or transferable to the purchaser.

(ii) The USASP shall:

(A) have an established fee that has been approved by the Department of Administrative Services Rate Committee;

(B) receive the SP-1 form, and;

(C) generate an invoice for the transaction upon receiving full payment of the fee from the designated purchaser of the device.

(iii) The designated purchaser of the device shall:

(A) make full payment of the fee to the USASP for the item, and;

(B) sign the invoice and return the signed invoice to USASP.

(iv) The agency may be authorized by the division to transfer ownership of the personal handheld electronic device to the designated purchaser of the device.

(12) The USASP Manager or designee may make an exception to the written authorization requirement identified in paragraph A above. Exceptions must be for good cause and must consider:

(a) The cost to the state;

(b) The potential liability to the state;

(c) The overall best interest of the state.

11-105. Related Party Transactions.

(1) The USASP has a duty to the public to ensure that State-owned surplus property is disposed of at fair market value, in an independent and ethical manner, and that the property or the value of the property has not been misrepresented. A conflict of interest may exist or appear to exist when a related party attempts to purchase surplus property.

(2) A related party is defined as someone who may fit into any of the following categories pertaining to the surplus property in question:

(a) Has purchasing authority.

(b) Has maintenance authority.

(c) Has disposition or signature authority.

(d) Has authority regarding the disposal price.

(e) Has access to restricted information.

(f) Is perceived to be a related party using other criteria which may prohibit independence.

(3) Owning state agencies may list any recommended purchasers on the standard form SP-1. Final decision rests with USASP as to selling price and buyer.

(4) When a prospective purchaser is identified or determined to be a related party, the USASP will employ one of the following procedures:

(a) The USASP may require written justification and authorization from the Department or Division Head or authorized agent. Justification may include reference to maintenance history, purchase price and the absence of conflicts of interest. If the related party is an authorized agent, a higher approval may be sought.

(b) The USASP may choose to hold the property for sale by public auction or sealed bid. The prospective buyer may then compete against other bidders.

(c) The USASP may hold the property for a 30-day period before allowing the related party the opportunity to purchase the property, thus allowing for purchase of the property in accordance with the priorities listed below. The 30-day holding period may be waived if shown to be in the best interest of the state.

11-106. Priorities.

(1) Public agencies are given priority for the purchase of state-owned surplus property.

(2) Property received by the USASP that is determined to be unique, in short supply or in high demand by public agencies shall be held for a period of 30 days before being offered for sale to the general public. The 30-day holding period may be waived if shown to be in the best interest of the state.

(3) For this rule, the entities listed below, in priority order, are considered to be public agencies:

(a) State Agencies

(b) State Universities, Colleges, and Community Colleges

(c) Other tax supported educational agencies or political subdivisions in the State of Utah including cities, towns, counties and local law enforcement agencies

(d) Other tax supported educational entities

(e) Non-profit health and educational institutions

(4) State-owned personal property that is not purchased by or transferred to public agencies during the 30-day hold period may be offered for public sale. The 30-day holding period may be waived if shown to be in the best interest of the state.

(5) The USASP Manager or designee shall make the determination as to whether property is subject to the 30-day hold period. The decision shall consider the following:

(a) The cost to the state;

(b) The potential liability to the state;

(c) The overall best interest of the state.

11-107. Accounting and Reimbursement.

(1) The USASP will record and maintain records of all transactions related to the acquisition and sale of all state and federal surplus property. A summary of the total yearly sales of state surplus by agency or department will be provided to the legislature following the close of each fiscal year.

(2) Reimbursements to state agencies from the sale of their surplus property will be made through the Division of Finance on interagency transfers or warrant requests. The Surplus Agency is authorized to deduct operating costs from the selling price of all state surplus property. In all cases property will be priced to sale for fair market value. Items that are not marketable for whatever reason may be discounted in price or disposed of by abandonment, donation, or sold as scrap.

(3) Deposits from cash sales will be made to the State Treasurer in accordance with Title 51, Chapter 7.

(4) The USASP may maintain a federal working capital reserve not to exceed one year's operating expenses. In the event the Surplus Agency accumulates funds in excess of the allowable working capital reserve, they will reduce their service and handling charge to under recover operating expenses and reduce the Retained Earnings balance accordingly. The only exception is where the USASP is accumulating excess funds in anticipation of the purchase of new facilities or capital items. Prior to the accumulation of excess funds, the USASP must obtain the written approval of the Executive Director of the Department of Administrative Services.

11-108. Payment.

(1) Payment received from public purchasers may be in the form of cash and/or certified funds, authorized bank credit cards, and personal checks. Personal checks may not be accepted for amounts exceeding \$200. Two-party checks shall not be accepted.

(2) Payment received from state subdivisions shall be in the form of agency or subdivision check or purchasing card.

(3) Payment made by public purchasers shall be at the time of purchase and prior to removal of the property purchased. Payment for purchases by state subdivisions shall be within 60 days following the purchase and removal of the property.

(4) The USASP Manager or designee may make exceptions to the payment provisions of this rule for good cause. A good cause exception requires a weighing of:

(a) The cost to the state;

(b) The potential liability to the state;

(c) The overall best interest of the state.

11-109. Bad Debt Collection.

(1) The USASP shall initiate formal collection procedures in the event that a check from the general public, state subdivisions, or other agencies is returned to the USASP for "insufficient funds".

(2) In the event that a check is returned to the USASP is returned for "insufficient fund," the USASP may:

(a) Prohibit the debtor from making any future purchases from the USASP until the debt is paid in full.

(b) Have division accountant send a certified letter to the debtor stating that:

(i) the debtor has 15 days to pay the full amount owed with cash or certified funds, including any and all additional fees associated with the collection process, such as returned check fees; and

(ii) If the balance is not paid within the 15 day period, the matter will be referred to the Office of State Debt Collection for formal collection proceedings.

(3) Debts for which payments have not been received in full within the 15 day period referred to above, shall be assigned to the Office of State Debt Collection in accordance with statute.

11-110. Public Sale of Surplus Property.

(1) State-owned surplus property may be purchased at any time by the general public, subject to any 30-day holding period that may be assigned by USASP management. The 30-day holding period may be waived if shown to be in the best interest of the state.

(2) At the discretion of the USASP Manager, any state-owned surplus property may be sold to the general public by auction, sealed bid, or other acceptable method. Property to be auctioned may be consigned out to an auction service. If a consignment approach is considered, the USASP Manager must ensure that the auction service is contracted by and authorized by the Division of Purchasing.

(3) Federal surplus property auctions to the general public may be accomplished on occasions and subject to the limitations as indicated previously.

(4) The frequency of public auctions, for either State-owned or federal surplus property will be regulated by current law as applicable, the volume of items held in inventory at the USASP, and the profitability of conducting auctions versus other approaches to disposing of surplus property.

### **R33-11-2. Surplus Firearms.**

11-201. Purpose and Authority.

This rule sets forth policies and procedures for disposing of surplus firearms from state agencies and participating local agencies, as authorized in the Utah Code, Title 63A, Chapter 2, Part

4. This rule governs the destruction, sale, transfer, or donation of surplus firearms to any agency or to the general public.

11-202. Definitions.

(1) As used in this rule:

(a) "Firearm" means any state owned firearm, including any confiscated or seized firearm over which the state has disposal authority, and any firearm declared surplus by a local subdivision.

(b) "USASP" means Utah State Agency for Surplus Property.

(c) "Handgun" means any pistol or revolver.

(d) "Hunting or sporting rifle" means any long barreled shotgun or rifle manufactured for hunting or sporting purposes.

(e) "Licensed firearms dealer" means a firearms dealers licensed by the Federal Bureau of Alcohol, Tobacco and Firearms.

11-203. Procedures.

(1) All state owned firearms shall be disposed of under the general provisions of Subsection R33-11-1 11-101.

(a) As an exception to the purchase priority listed in Subsection R33-11-1 11-106, the sale of firearms directly to the general public by the USASP is prohibited.

(b) Hunting and sporting rifles meeting Federal Firearms regulations may be sold only to firearms dealers licensed by the Federal Bureau of Alcohol, Tobacco and Firearms. All sales will be accomplished by either auction or sealed bid.

(c) Except as provided in this Subsection (c), handguns shall be transferred to the Utah State Public Safety Crime Lab for use or to be destroyed.

(i) The owning agency may trade a handgun into a licensed firearm dealer for credit toward the current purchase of a new handgun.

(ii) USASP may authorize the sale of a handgun to a legally constituted law enforcement agency.

(iii) USASP may authorize the sale of a handgun to a POST certified individual if the owning agency submits a signed request that includes:

(A) the individual's name;

(B) the serial number of the handgun to be sold; and

(C) the signature of an authorized agent of the owning agency.

(2) All firearms retained by the USASP shall be in accordance with Federal Firearms regulations pursuant to Sections 921(a)(19) and 922(s) of Title 18, United States Code.

(a) Written certification that surplus firearms meet federal firearms regulations shall be provided by the owning agency or a qualified armorer.

(3) All firearms retained by the USASP shall be in good working condition.

(a) Written certification specifying the condition of surplus firearms shall be provided by the owning agency or a qualified armorer.

### **R33-11-3. Utah State Agency for Surplus Property Adjudicative Proceedings.**

11-301. Purpose.

As required by the Utah Administrative Procedures Act, this rule provides the procedures for adjudicating disputes brought before the Utah State Agency for Surplus Property under the authority granted by Section 63A-2-401 and Section 63G-4, et seq.

11-302. Definitions.

Terms used are as defined in Section 63G-4-103, except "USASP" means the Utah State Agency for Surplus Property, and "superior agency" means the Department of Administrative Services.

11-303. Proceedings to be Informal.

All matters over which the USASP has jurisdiction including bid validity determination and sales issues, which are subject to Title 63G, Chapter 4, will be informal in nature for purposes of adjudication. The Director of the Division of Purchasing and General Services or his designee will be the presiding officer.

11-304. Procedures Governing Informal Adjudicatory Proceedings.

(1) No response need be filed to the notice of agency action or request for agency action.

(2) The USASP may hold a hearing at the discretion of the director of the Division of Purchasing and General Services or his designee unless a hearing is required by statute. A request for hearing must be made within ten days after receipt of the notice of agency action or request for agency action.

(3) Only the parties named in the notice of agency action or request for agency action will be permitted to testify, present evidence and comment on the issues.

(4) A hearing will be held only after timely notice of the hearing has been given.

(5) No discovery, either compulsory or voluntary, will be permitted except that all parties to the action shall have access to information and materials not restricted by law.

(6) No person may intervene in an agency action unless federal statute or rule requires the agency to permit intervention.

(7) Any hearing held under this rule is open to all parties.

(8) Within thirty days after the close of any hearing, the director of the Division of Purchasing and General Services or his designee shall issue a written decision stating the decision, the reasons for the decision, time limits for filing an appeal with the director of the superior agency, notice of right of judicial review, and the time limits for filing an appeal to the appropriate district court.

(9) The decision rendered by the Director of the Division of Purchasing and General Services or his designee shall be based on the facts in the USASP file and if a hearing is held, the facts based on evidence presented at the hearing.

(10) The agency shall notify the parties of the agency order by promptly mailing a copy thereof to each at the address indicated in the file.

(11) Whether a hearing is held or not, an order issued under the provisions of this rule shall be the final order of the superior agency, and then may be appealed to the appropriate district court.

**R33-11-7. Surplus Property Rate Schedule.**11-701. Purpose and Authority.

As allowed in Section 63A-2-405 of the Utah Code, charges and fees are assessed based on the value of the surplus property sold or donated as well as for services and handling of the property by the Utah State Agency for Surplus Property.

11-702. Definitions.

"USASP" means Utah State Agency for Surplus Property.

11-703. Rate Schedule.

The USASP operates by assessing services and handling charges on property sold or donated. The services and handling charges are based on the direct and indirect costs associated with acquiring, receiving, warehousing, distributing, selling, donating, or transferring the surplus property.

(a) The USASP rate structure includes several individual rate schedules for different types of surplus property sales and/or services provided. The USASP rate structure is reviewed annually.

(b) In addition to the direct and indirect costs identified above, other expenses that were determined to be necessary in order to sell or donate the property may also be included. Such costs would include any rehabilitation expenses or special handling expenses.

**KEY: rates, state surplus property**

**Date of Enactment or Last Substantive Amendment: 2011 Authorizing, and Implemented or Interpreted Law: 63A-2-401; 63A-2-405; 63A-2-407; 63G-4**

Commerce, Occupational and  
Professional Licensing  
**R156-1**  
General Rule of the Division of  
Occupational and Professional  
Licensing

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 34885  
FILED: 05/31/2011

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change implements changes made by the 2011 Legislature. Specifically it addresses H.B. 238, H.B. 243, and S.B. 129. A companion rule filing affecting Rule R156-46b revises the designation of adjudicative proceedings moving some from formal to informal proceedings. This filing designates the presiding officers for these proceedings. This filing removes some reinstatement requirement language which has proven difficult or unworkable to administer. Finally, this filing also makes technical, cleanup, and minor clarification changes. (DAR NOTE: H.B. 238 (2011) was effective 03/18/2011. H.B. 243 and S.B. 129 were both effective 05/10/2011. The proposed rule filing to Rule R156-46b is under DAR No. 34886 in this issue, June 15, 2011, of the Bulletin.)

**SUMMARY OF THE RULE OR CHANGE:** Subsection R156-1-102(13) and Subsection R156-1-109(1) modify the designation of the alternate presiding officer for citation hearings and for issuing investigative subpoenas, to be consistent with and provide future flexibility in the Division's "Revised Consolidation of Delegation of Authority Letters" document. Subsection R156-1-106(1) modifies this section to clarify that licensee lists provided as permitted by statute or rule may include a licensee's e-mail address. Subsections R156-1-109(3) and (4) designate the presiding officers for certain adjudicative proceedings that are being reclassified as informal proceedings in a separate companion rule filing. The purpose of these changes is to achieve greater efficiency. This filing also makes technical numbering changes to these subsections. Subsection R156-1-305(2) adds physical therapists and landscape architects to the list of license classifications allowed to place their license on inactive status. Section R156-1-308a removes and revises certain renewal dates to: a) implement the repeal of the Alternative Dispute Resolution Providers Certification Act by H.B. 243; b) address the renewal dates to implement the creation of a new Radiologist Assistant license classification and the revision of the classification of Radiology Technologist to Radiologic Technologist, as revised under H.B. 238; c) address the renewal dates to implement the creation of Type I and Type II Physician Foreign Teaching licenses as created by S.B. 129; and d) to address the revision of the Vocational Rehabilitation Counselor renewal dates from an annual March 31 renewal date to an every two years odd-year renewal date cycle as revised by H.B. 243. Section R156-1-308c clarifies the duty of a licensee to maintain a current mailing address with the Division, and provides that notice to such address constitutes legal notice to a licensee. This was codified into statute by H.B. 243. Subsections R156-1-308g(3) and (4) remove a reinstatement requirement that requires applicants who apply more than two years after the license expiration of their license, who have continued working in their occupation or profession on an expired license, a backward looking renewal fee requirement that is determined by multiplying the current renewal fee times the number of missed renewal periods the applicant worked before applying to reinstate their expired license. This requirement has proven difficult or unworkable to administer and has been administered inconsistently by Division staff. Further it is deemed unnecessary now that we just acquired fine and citation authority across the board for all occupations and professions for unlicensed practice. This filing also removes redundant or unnecessary reinstatement language. Section R156-1-502 establishes a fine schedule to implement the fine authority granted under H.B. 243. Finally, this filing rennumbers and makes technical and clarifying changes throughout the filing.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-1-308 and Subsection 58-1-106(1) (a) and Subsection 58-1-501(4)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** The Division will incur reprinting costs of approximately \$100. The fiscal impact of the repeal

of the Alternative Dispute Resolution Providers Certification Act and the creation of a new Radiology Assistant and Type I and II Foreign Trained Physician-Educator license classifications were quantified in the fiscal notes for H.B. 243 and 238, and S.B. 129, respectively. This rule filing merely conforms our list of renewal dates to address the referenced legislation. Revenue to the General Fund will be generated from the new fine and citation authority granted by S.B. 243. However, the amount cannot be quantified. Revenue to the Commerce Service Fund will potentially be lost by not charging the backward looking reinstatement fee described above. However few if any Bureau Managers were imposing the fee such that it is not anticipated there will be any net lost revenue of significance.

♦ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed occupations and professions and applicants for licensure in those occupations and professions. As a result, the proposed amendments do not apply to local governments.

♦ **SMALL BUSINESSES:** Alternative Dispute Resolution Providers: The number of small Alternative Dispute Resolution small businesses is unknown. Deregulation of the Alternative Dispute Resolution Providers profession will eliminate the mandatory costs associated with an individual qualifying for and maintaining a license. The costs to qualify for a license were between \$900 and \$1,200 for the 40-hour education requirement, an unidentified amount for the 32-hour experience requirement, and \$85 for the initial license application fee. The cost to maintain a license is a \$63 renewal fee. There are currently 49 licensees. This profession renewed on September 30th of even years. Due to the repeal of the licensing requirement, the \$3,087 collected in renewal fees a little over six months ago will be refunded, as will the \$170 of initial licensing fees for the two new license applicants during 2010. It should be noted however that individuals will likely continue to complete this education and experience, although no longer required, in order to be trained and employable or competitive in the profession. Physical Therapists: Physical Therapists pay a renewal fee of \$47. If they place their license on inactive status they will pay an inactive license fee of \$50 on the same two-year cycle. The reason for putting a license on inactive status when a licensee is not using the license currently but may use it in the future is to make the continuing education requirement inapplicable. Physical Therapists are required to obtain 40 hours of continuing education each two-year renewal cycle at an approximate cost of \$1,200. Licensees are required to complete the current renewal year continuing education when they reinstate their license. Radiology Assistants: Radiology Assistants will be impacted by the new Radiology Assistant licensing requirement required under H.B. 238. Radiology Assistants must all first meet the requirements for and become licensed as a Radiologic Technologist. This is an approved two-year Associate's degree in radiologic technology. Upon completion of the degree applicants for licensure must take the examination and be certified as a Radiologic Technologist by the American Registry of Radiologic Technologist (ARRT). The initial examination and certification cost is \$200. Thereafter,

certificate holders must pay an annual certification fee of \$20. Radiology Assistants must then complete any Bachelors of Science degree and take and an examination from and be certified by the ARRT as a Radiology Assistant. The initial examination and registration fee is \$200. Thereafter certified Radiology Assistants must pay an annual certification fee of \$20. Radiology Assistants are not required to maintain their former Radiologic Technologist certification. As an alternative to the ARRT Radiology Assistant certification, applicants may be certified by the Certification Board for Radiology Practitioner Assistants (CBRPA). The initial examination fee is \$150 with a \$100 annual certification fee thereafter. The cost of the education programs described above for Radiology Assistants varies from between approximately \$13,750 and \$24,750. Modification of Reinstatement Fees: Reinstatement applicants who have been working on an expired license will potentially experience a savings in application filing fees by not charging the backward looking reinstatement fee described in the Summary of Filing above. However few if any Bureau Managers have been imposing this fee, such that it is not anticipated there will be any net savings to applicants.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is not anticipated that Alternative Dispute Resolution Provider education and certification programs will lose revenue in the amount of the potential cost savings described above, because individuals will likely attend their programs despite deregulation, in order to be trained and employable or competitive in the profession.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Alternative Dispute Resolution Providers: Deregulation of the Alternative Dispute Resolution Providers profession will eliminate the mandatory costs associated with an individual qualifying for and maintaining a license. The costs to qualify for a license were between \$900 and \$1,200 for the 40-hour education requirement, an unidentified amount for the 32-hour experience requirement, and \$85 for the initial license application fee. The cost to maintain a license is a \$63 renewal fee. There are currently 49 licensees. This profession renewed on September 30th of even years. Due to the repeal of the licensing requirement, the \$3,087 collected in renewal fees a little over six months ago will be refunded, as will the \$170 of initial licensing fees for the two new license applicants during 2010. It should be noted however that individuals will likely continue to complete this education and experience, although no longer required, in order to be trained and employable or competitive in the profession. Physical Therapists: Physical Therapists pay a renewal fee of \$47. If they place their license on inactive status, they will pay an inactive license fee of \$50 on the same two-year cycle. The reason for putting a license on inactive status when a licensee is not using the license currently but may use it in the future is to make the continuing education requirement inapplicable. Physical Therapists are required to obtain 40 hours of continuing education each two-year renewal cycle at an approximate cost of \$1,200. Licensees are required to complete the current renewal year

continuing education when they reinstate their license. Radiology Assistants: Radiology Assistants will be impacted by the new Radiology Assistant licensing requirement required under H.B. 238. Radiology Assistants must all first meet the requirements for and become licensed as a Radiologic Technologist. This is an approved two-year Associate's degree in radiologic technology. Upon completion of the degree applicants for licensure must take the examination and be certified as a Radiologic Technologist by the American Registry of Radiologic Technologists (ARRT). The initial examination and certification cost is \$200. Thereafter, certificate holders must pay an annual certification fee of \$20. Radiology Assistants must then complete any Bachelor's of Science degree and take an examination from and be certified by the ARRT as a Radiology Assistant. The initial examination and registration fee is \$200. Thereafter certified Radiology Assistants must pay an annual certification fee of \$20. Radiology Assistants are not required to maintain their former Radiologic Technologist certification. As an alternative to the ARRT Radiology Assistant certification, applicants may be certified by the Certification Board for Radiology Practitioner Assistants(CBRPA). The initial examination fee is \$150 with a \$100 annual certification fee thereafter. The cost of the education programs described above for Radiology Assistants varies from between approximately \$13,750 and \$24,750. Physician Educators: Persons who qualify for a Type I or Type II physician educator licenses will be required to pay an initial license application fee of \$200 and a renewal fee every two years of \$183. The costs to meet the requirements for a Type I or Type II physician educator license are varied and cannot be capably estimated. Modification of Reinstatement Fees: Reinstatement applicants who have been working on an expired license will potentially experience a savings in application filing fees by not charging the backward looking reinstatement fee described in the Summary of Filing above. However few if any Bureau Managers have been imposing this fee, such that it is not anticipated there will be any net savings to applicants. Fine and Citation Authority: The fine authority granted to the Division to enforce, across all of its regulated professions, unlicensed practice and hiring persons requiring a license who are not licensed, will cost those so engaged in unlawful practice and generate general fund revenue. The maximum fines are \$1,000 for a first offense, \$2,000 for a second offense, and up to \$1,000 per day for ongoing offenses thereafter. The proposed rule establishes a fine schedule to make sure the Division is consistent in its enforcement. The fine schedule is set at \$500 and \$800, for a first offense of unlicensed practice and hiring someone who is required to be licensed who is unlicensed, respectively. A second offense is double this amount. A third offense is double the amount of the second offense per day of continued unlawful conduct. The Division cannot predict with any degree of certainty the number of citations that will be issued per month or year under this new authority.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing implements several statutory changes passed

in the 2011 General Session for which the fiscal impact had already been addressed. The proposed amendments and possible costs to licensees are addressed in the rule summary. No further fiscal impact to businesses is anticipated.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-1. General Rule of the Division of Occupational and Professional Licensing.**  
**R156-1-102. Definitions.**

In addition to the definitions in Title 58, as used in Title 58 or this rule:

(1) "Active and in good standing" means a licensure status which allows the licensee full privileges to engage in the practice of the occupation or profession subject to the scope of the licensee's license classification.

(2) "Aggravating circumstances" means any consideration or factors that may justify an increase in the severity of an action to be imposed upon an applicant or licensee. Aggravating circumstances include:

- (a) prior record of disciplinary action, unlawful conduct, or unprofessional conduct;
- (b) dishonest or selfish motive;
- (c) pattern of misconduct;
- (d) multiple offenses;
- (e) obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the Division;
- (f) submission of false evidence, false statements or other deceptive practices during the disciplinary process including creating, destroying or altering records after an investigation has begun;
- (g) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the Division;
- (h) vulnerability of the victim;
- (i) lack of good faith to make restitution or to rectify the consequences of the misconduct involved;

(j) illegal conduct, including the use of controlled substances; and

(k) intimidation or threats of withholding clients' records or other detrimental consequences if the client reports or testifies regarding the unprofessional or unlawful conduct.

(3) "Cancel" or "cancellation" means nondisciplinary action by the Division to rescind, repeal, annul, or void a license issued in error. Such action includes rescinding a license issued to an applicant whose payment of the required application fee is dishonored when presented for payment, or who has been issued a conditional license pending a criminal background check and the check cannot be completed due to the applicant's failure to resolve an outstanding warrant or to submit acceptable fingerprint cards.

(4) "Charges" means the acts or omissions alleged to constitute either unprofessional or unlawful conduct or both by a licensee, which serve as the basis to consider a licensee for inclusion in the diversion program authorized in Section 58-1-404.

(5) "Denial of licensure" means action by the Division refusing to issue a license to an applicant for initial licensure, renewal of licensure, reinstatement of licensure or relicensure.

(6)(a) "Disciplinary action" means adverse licensure action by the Division under the authority of Subsections 58-1-401(2)(a) through (2)(b).

(b) "Disciplinary action", as used in Subsection 58-1-401(5), shall not be construed to mean an adverse licensure action taken in response to an application for licensure. Rather, as used in Subsection 58-1-401(5), it shall be construed to mean an adverse action initiated by the Division.

(7) "Diversion agreement" means a formal written agreement between a licensee, the Division, and a diversion committee, outlining the terms and conditions with which a licensee must comply as a condition of entering in and remaining under the diversion program authorized in Section 58-1-404.

(8) "Diversion committees" mean diversion advisory committees authorized by Subsection 58-1-404(2)(a)(i) and created under Subsection R156-1-404a.

(9) "Duplicate license" means a license reissued to replace a license which has been lost, stolen, or mutilated.

(10) "Emergency review committees" mean emergency adjudicative proceedings review committees created by the Division under the authority of Subsection 58-1-108(2).

(11) "Expire" or "expiration" means the automatic termination of a license which occurs:

- (a) at the expiration date shown upon a license if the licensee fails to renew the license before the expiration date; or
- (b) prior to the expiration date shown on the license:
  - (i) upon the death of a licensee who is a natural person;
  - (ii) upon the dissolution of a licensee who is a partnership, corporation, or other business entity; or
  - (iii) upon the issuance of a new license which supersedes an old license, including a license which:
    - (A) replaces a temporary license;
    - (B) replaces a student or other interim license which is limited to one or more renewals or other renewal limitation; or
    - (C) is issued to a licensee in an upgraded classification permitting the licensee to engage in a broader scope of practice in the licensed occupation or profession.

(12) "Inactive" or "inactivation" means action by the Division to place a license on inactive status in accordance with Sections 58-1-305 and R156-1-305.

(13) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the Division regulatory and compliance officer, or if the Division regulatory and compliance officer is unable to so serve for any reason, a Department administrative law judge, or if both the Division regulatory and compliance officer and a Department administrative law judge are unable to so serve for any reason, an alternate ~~bureau manager~~ designated by the director in writing.

(14) "License" means a right or privilege to engage in the practice of a regulated occupation or profession as a licensee.

(15) "Limit" or "limitation" means nondisciplinary action placing either terms and conditions or restrictions or both upon a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(16) "Mitigating circumstances" means any consideration or factors that may justify a reduction in the severity of an action to be imposed upon an applicant or licensee.

(a) Mitigating circumstances include:

(i) absence of prior record of disciplinary action, unlawful conduct or unprofessional conduct;

(ii) personal, mental or emotional problems provided such problems have not posed a risk to the health, safety or welfare of the public or clients served such as drug or alcohol abuse while engaged in work situations or similar situations where the licensee or applicant should know that they should refrain from engaging in activities that may pose such a risk;

(iii) timely and good faith effort to make restitution or rectify the consequences of the misconduct involved;

(iv) full and free disclosure to the client or Division prior to the discovery of any misconduct;

(v) inexperience in the practice of the occupation and profession provided such inexperience is not the result of failure to obtain appropriate education or consultation that the applicant or licensee should have known they should obtain prior to beginning work on a particular matter;

(vi) imposition of other penalties or sanctions if the other penalties and sanctions have alleviated threats to the public health, safety, and welfare; and

(vii) remorse.

(b) The following factors should not be considered as mitigating circumstances:

(i) forced or compelled restitution;

(ii) withdrawal of complaint by client or other affected persons;

(iii) resignation prior to disciplinary proceedings;

(iv) failure of injured client to complain; and

(v) complainant's recommendation as to sanction.

(17) "Nondisciplinary action" means adverse licensure action by the Division under the authority of Subsections 58-1-401(1) or 58-1-401(2)(c) through (2)(d).

(18) "Peer committees" mean advisory peer committees to boards created by the legislature in Title 58 or by the Division under the authority of Subsection 58-1-203(1)(f).

(19) "Probation" means disciplinary action placing terms and conditions upon a license;

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(20) "Public reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a public record.

(21) "Regulatory authority" as used in Subsection 58-1-501(2)(d) means any governmental entity who licenses, certifies, registers, or otherwise regulates persons subject to its jurisdiction, or who grants the right to practice before or otherwise do business with the governmental entity.

(22) "Reinstate" or "reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (26)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.

(23) "Relicense" or "relicensure" means to license an applicant who has previously been revoked or has previously surrendered a license.

(24) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (25)(a), placed on a license issued to an applicant for licensure.

(25) "Restrict" or "restriction" means disciplinary action qualifying or limiting the scope of a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-304; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(26) "Revoke" or "revocation" means disciplinary action by the Division extinguishing a license.

(27) "Suspend" or "suspension" means disciplinary action by the Division removing the right to use a license for a period of time or indefinitely as indicated in the disciplinary order, with the possibility of subsequent reinstatement of the right to use the license.

(28) "Surrender" means voluntary action by a licensee giving back or returning to the Division in accordance with Section 58-1-306, all rights and privileges associated with a license issued to the licensee.

(29) "Temporary license" or "temporary licensure" means a license issued by the Division on a temporary basis to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-303.

(30) "Unprofessional conduct" as defined in Title 58 is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-1-502.

(31) "Warning or final disposition letters which do not constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions of law and do not constitute a reprimand, but which may address any or all of the following:

(a) Division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of Division concerns.

**R156-1-106. Division - Duties, Functions, and Responsibilities.**

(1) In accordance with Subsection 58-1-106(2), the following responses to requests for lists of licensees may include multiple licensees per request and may include home telephone numbers, ~~and~~ home addresses, and e-mail addresses, subject to the restriction that the addresses and telephone numbers shall only be used by a requester for purposes for which the requester is properly authorized and shall not be sold or otherwise redisclosed by the requester:

(a) responses to requests from another governmental entity, government-managed corporation, a political subdivision, the federal government, another state, or a not-for-profit regulatory association to which the Division is a member;

(b) responses to requests from an occupational or professional association, private continuing education organizations, trade union, university, or school, for purposes of education programs for licensees;

(c) responses to a party to a prelitigation proceeding convened by the Division under Title 78, Chapter 14;

(d) responses to universities, schools, or research facilities for the purposes of research;

(e) responses to requests from licensed health care facilities or third party credentialing services, for the purpose of verifying licensure status for issuing credentialing or reimbursement purposes; and

(f) responses to requests from a person preparing for, participating in, or responding to:

(i) a national, state or local emergency;

(ii) a public health emergency as defined in Section 26-23b-102; or

(iii) a declaration by the President of the United States or other federal official requesting public health-related activities.

(2) In accordance with Subsection 58-1-106(3)(a) and (b), the Division may deny a request for an address or telephone number of a licensee to an individual who provides proper identification and the reason for the request, in writing, to the Division, if the reason for the request is deemed by the Division to constitute an unwarranted invasion of privacy or a threat to the public health, safety, and welfare.

(3) In accordance with Subsection 58-1-106(3)(c), proper identification of an individual who requests the address or telephone number of a licensee and the reason for the request, in writing, shall consist of the individual's name, mailing address, and daytime number, if available.

**R156-1-109. Presiding Officers.**

In accordance with Subsection 63G-4-103(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

(1) The Division regulatory and compliance officer is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the Division regulatory and compliance officer is unable to so serve for any reason, a ~~bureau~~

~~manager designated]~~replacement specified by the director is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Unless otherwise specified in writing by the director, or with regard to Title 58, Chapter 55, by the Construction Services Commission, the department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the director or commission, respectively, determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as provided in Subsection (4) or otherwise specified in writing by the director, the presiding officer for adjudicative proceedings before the Division are as follows:

(a) Director. The director shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(e), and R156-46b-201(2)(a) through (c), however resolved, including stipulated settlements and hearings; and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(d), (h), (j), (m), (n), (p), and (t), and R156-46b-202(2)(a), ~~and~~ (b) and (c)(ii), however resolved, including memorandums of understanding and stipulated settlements.

(b) Bureau managers or program coordinators. Except for Title 58, Chapter 55, the bureau manager or program coordinator over the occupation or profession or program involved shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and shall issue a recommended order to the Division based upon the record developed at the hearing determining all issues pending before the Division to the director for a final order;

(ii) formal adjudicative proceedings described in Subsection R156-46b-201(1)(f), for purposes of determining whether a request for a board of appeal is properly filed as set forth in Subsections R156-56-105(1) through (4); and

(iii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (c), (e), (g), (i), (k), ~~and~~ (o), (q)(ii) and (iii), (r)(ii) and (iii), (s)(ii) and (iii), and R156-46b-202(2)(c)(iii).

(iv) At the direction of a bureau manager or program coordinator, a licensing technician or program technician may sign an informal order in the name of the licensing technician or program technician provided the wording of the order has been approved in advance by the bureau manager or program coordinator and provided the caption "FOR THE BUREAU MANAGER" or "FOR THE PROGRAM COORDINATOR" immediately precedes the licensing technician's or program technician's signature.

(c) ~~Contested]~~Citation Hearing Officer. The regulatory and compliance officer or other ~~contested]~~citation hearing officer designated in writing by the director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(l).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(f) for convening a board of appeal under Subsection 58-56-8(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. An administrative law judge shall perform the role specified in Subsection 58-1-109(2).

(e) Residence Lien Recovery Fund Advisory Board. The Residence Lien Recovery Fund Advisory Board shall be the presiding officer for adjudicative proceedings described in Subsection R156-46b-202(1)(g) that exceed the authority of the program coordinator, as delegated by the board, or are otherwise referred by the program coordinator to the board for action.

(4) Unless otherwise specified in writing by the Construction Services Commission, the presiding officers and process for adjudicative proceedings under Title 58, Chapter 55, are established or clarified as follows:

(a) Commission.

(i) The commission shall be the presiding officer for all adjudicative proceedings under Title 58, Chapter 55, except as otherwise delegated by the commission in writing or as otherwise provided in this rule; provided, however, that all orders adopted by the commission as a presiding officer shall require the concurrence of the director.

(ii) Unless otherwise specified in writing by the commission, the commission is designated as the presiding officer:

(A) for formal adjudicative proceedings described in Subsections R156-46b-201(1)(e) and R156-46b-201(2)(a) through (b), however resolved, including stipulated settlements and hearings;

(B) informal adjudicative proceedings described in Subsections R156-46b-202(1)(d), (m), (n), (p),(s)(i) and (t), and R156-46b-202(2)(b) and (c), however resolved, including memorandums of understanding and stipulated settlements;

(C) to serve as fact finder and adopt orders in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed under Title 58, Chapter 55; and

(D) to review recommended orders of a board, an administrative law judge, or other designated presiding officer who acted as the fact finder in an evidentiary hearing involving a person licensed or required to be licensed under Title 58, Chapter 55, and to adopt an order of its own. In adopting its order, the commission may accept, modify or reject the recommended order.

(iii) If the commission is unable for any reason to act as the presiding officer as specified, it shall designate another presiding officer in writing to so act.

(iv) Orders of the commission shall address all issues before the commission and shall be based upon the record developed in an adjudicative proceeding conducted by the commission. In cases in which the commission has designated another presiding officer to conduct an adjudicative proceeding and submit a recommended order, the record to be reviewed by the commission shall consist of the findings of fact, conclusions of law, and recommended order submitted to the commission by the presiding officer based upon the evidence presented in the adjudicative proceeding before the presiding officer.

(v) The commission or its designee shall submit adopted orders to the director for the director's concurrence or rejection within 30 days after it receives a recommended order or adopts an order, whichever is earlier. An adopted order shall be deemed issued and constitute a final order upon the concurrence of the director.

(vi) If the director or his designee refuses to concur in an adopted order of the commission or its designee, the director or his designee shall return the order to the commission or its designee with the reasons set forth in writing for the nonconcurrence therein. The commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return, provided that unless the director or his designee and the commission or its designee agree to an extension, any final order must be issued within 90 days of the date of the initial recommended order, or the adjudicative proceeding shall be dismissed. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the commission or its designee and the director or his designee to resolve the reasons for the director's refusal to concur in an adopted order.

(vii) The record of the adjudicative proceeding shall include recommended orders, adopted orders, refusals to concur in adopted orders, and final orders.

(viii) The final order issued by the commission and concurred in by the director may be appealed by filing a request for agency review with the executive director or his designee within the department.

(ix) The content of all orders shall comply with the requirements of Subsection 63G-4-203(1)(i) and Sections 63G-4-208 and 63G-4-209.

(b) Director. The director is designated as the presiding officer for the concurrence role on disciplinary proceedings under Subsections R156-46b-202(2)(c) as required by Subsection 58-55-103(1)(b)(iv).

(c) Administrative Law Judge. Unless otherwise specified in writing by the commission, the department administrative law judge is designated as the presiding officer to conduct formal adjudicative proceedings before the commission and its advisory boards, as specified in Subsection 58-1-109(2).

(d) Bureau Manager. Unless otherwise specified in writing by the commission, the responsible bureau manager is designated as the presiding officer for conducting:

(i) formal adjudicative proceedings specified in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board or commission who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and to adopt orders as set forth in this rule; and

(ii) informal adjudicative proceedings specified in Subsections R156-46b-202(1)(a) through (c), (e), (i),(o), (q)(i) and (r)(i).

(iii) At the direction of a bureau manager, a licensing technician may sign an informal order in the name of the licensing technician provided the wording of the order has been approved in advance by the bureau manager and provided the caption "FOR THE BUREAU MANAGER" immediately precedes the licensing technician's signature.

(e) Plumbers Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Plumbers Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as plumbers.

(f) Electricians Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Electricians Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as electricians.

(g) Alarm System Security and Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Alarm System Security and Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as alarm companies or agents.

**R156-1-305. Inactive Licensure.**

(1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee may not apply for inactive licensure status.

(2) The following licenses issued under Title 58 that are active in good standing may be placed on inactive licensure status:

- (a) advanced practice registered nurse;
- (b) architect;
- (c) audiologist;
- (d) certified nurse midwife;
- (e) certified public accountant emeritus;
- (f) certified registered nurse anesthetist;
- (g) certified court reporter;
- (h) certified social worker;
- (i) chiropractic physician;
- (j) clinical social worker;
- (k) contractor;
- (l) deception detection examiner;
- (m) deception detection intern;
- (n) dental hygienist;
- (o) dentist;
- (p) direct-entry midwife;
- (q) genetic counselor;
- (r) health facility administrator;
- (s) hearing instrument specialist;
- (t) ~~landscape architect;~~
- ([t]u) licensed substance abuse counselor;
- ([u]v) marriage and family therapist;
- ([v]w) naturopath/naturopathic physician;
- ([w]x) optometrist;
- ([x]y) osteopathic physician and surgeon;
- ([y]z) pharmacist;
- ([z]aa) pharmacy technician;
- (bb) ~~physical therapist;~~
- ([aa]cc) physician assistant;
- ([bb]dd) physician and surgeon;
- ([ee]ee) podiatric physician;

- ([dd]ff) private probation provider;
- ([ee]gg) professional counselor;
- ([ff]hh) professional engineer;
- ([gg]ii) professional land surveyor;
- ([hh]jj) professional structural engineer;
- ([ii]kk) psychologist;
- ([jj]ll) radiology practical technician;
- ([kk]mm) radiolog[yr]ic technologist;
- ([H]nn) security personnel;
- ([mm]oo) speech-language pathologist; and
- ([nn]pp) veterinarian.

(3) Applicants for inactive licensure shall apply to the Division in writing upon forms available from the Division. Each completed application shall contain documentation of requirements for inactive licensure, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(4) If all requirements are met for inactive licensure, the Division shall place the license on inactive status.

(5) A license may remain on inactive status indefinitely except as otherwise provided in Title 58 or rules which implement Title 58.

(6) An inactive license may be activated by requesting activation in writing upon forms available from the Division. Unless otherwise provided in Title 58 or rules which implement Title 58, each reactivation application shall contain documentation that the applicant meets current renewal requirements, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(7) An inactive licensee whose license is activated during the last four months of a renewal cycle shall, upon payment of the appropriate fees, be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their activated license.

(8) A Controlled Substance license may be placed on inactive status if attached to a primary license listed in Subsection R156-1-305(2) and the primary license is placed on inactive status.

**R156-1-308a. Renewal Dates.**

(1) The following standard two-year renewal cycle renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

TABLE  
RENEWAL DATES

(1) Acupuncturist	May 31	even years
(2) Advanced Practice Registered Nurse	January 31	even years
<del>(3) Alternate Dispute Resolution Provider</del>	<del>September 30</del>	<del>even years</del>
([4]3) Architect	May 31	even years
([5]4) Athlete Agent	September 30	even years
([6]5) Athletic Trainer	May 31	odd years
([7]6) Audiologist	May 31	odd years
([8]7) Barber	September 30	odd years
([9]8) Barber School	September 30	odd years
([10]9) Building Inspector	November 30	odd years
([11]10) Burglar Alarm Security	November 30	even years
([12]11) C.P.A. Firm	September 30	even years
([13]12) Certified Court Reporter	May 31	even years
([14]13) Certified Dietitian	September 30	even years
([15]14) Certified Medical Language Interpreter	March 31	odd years
([16]15) Certified Nurse Midwife	January 31	even years
([17]16) Certified Public Accountant	September 30	even years
([18]17) Certified Registered Nurse Anesthetist	January 31	even years

( <del>19</del> )18	Certified Social Worker	September 30	even years	( <del>73</del> )72	Professional Counselor	September 30	even years
( <del>20</del> )19	Chiropractic Physician	May 31	even years	( <del>74</del> )73	Professional Engineer	March 31	odd years
( <del>21</del> )20	Clinical Social Worker	September 30	even years	( <del>75</del> )74	Professional Geologist	March 31	odd years
( <del>22</del> )21	Construction Trades Instructor	November 30	odd years	( <del>76</del> )75	Professional Land Surveyor	March 31	odd years
( <del>23</del> )22	Contractor	November 30	odd years	( <del>77</del> )76	Professional Structural Engineer	March 31	odd years
( <del>24</del> )23	Controlled Substance License	Attached to primary license renewal		( <del>78</del> )77	Psychologist	September 30	even years
( <del>25</del> )24	Controlled Substance Precursor	May 31	odd years	( <del>79</del> )78	Radiolog[y]ic Technologist,	May 31	odd year
( <del>26</del> )25	Controlled Substance Handler	May 31	odd years		Radiology Practical Technician		
( <del>27</del> )26	Cosmetologist/Barber	September 30	odd years		<u>Radiologist Assistant</u>		
( <del>28</del> )27	Cosmetology/Barber School	September 30	odd years	( <del>80</del> )79	Recreational Therapy Technician, Specialist,		
( <del>29</del> )28	Deception Detection	November 30	even years		Master Specialist	May 31	odd years
( <del>30</del> )29	Dental Hygienist	May 31	even years	( <del>81</del> )80	Registered Nurse	January 31	odd years
( <del>31</del> )30	Dentist	May 31	even years	( <del>82</del> )81	Respiratory Care Practitioner	September 30	even years
( <del>32</del> )31	Direct-entry Midwife	September 30	odd years	( <del>83</del> )82	Security Personnel	November 30	even years
( <del>33</del> )32	Electrician			( <del>84</del> )83	Social Service Worker	September 30	even years
	Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	November 30	even years	( <del>85</del> )84	Speech-Language Pathologist	May 31	odd years
( <del>34</del> )33	Electrologist	September 30	odd years	( <del>86</del> )86	Veterinarian	September 30	even years
( <del>35</del> )34	Electrology School	September 30	odd years	(87)	Vocational Rehabilitation Counselor	March 31	odd years
( <del>36</del> )35	Elevator Mechanic	November 30	even years				
( <del>37</del> )36	Environmental Health Scientist	May 31	odd years				
( <del>38</del> )37	Esthetician	September 30	odd years				
( <del>39</del> )38	Esthetics School	September 30	odd years				
( <del>40</del> )39	Factory Built Housing Dealer	September 30	even years				
( <del>41</del> )40	Funeral Service Director	May 31	even years				
( <del>42</del> )41	Funeral Service Establishment	May 31	even years				
( <del>43</del> )42	Genetic Counselor	September 30	even years				
( <del>44</del> )43	Health Facility Administrator	May 31	odd years				
( <del>45</del> )44	Hearing Instrument Specialist	September 30	even years				
( <del>46</del> )45	Internet Facilitator	September 30	odd years				
( <del>47</del> )46	Landscape Architect	May 31	even years				
( <del>48</del> )47	Licensed Practical Nurse	January 31	even years				
( <del>49</del> )48	Licensed Substance Abuse Counselor	May 31	odd years				
( <del>50</del> )49	Marriage and Family Therapist	September 30	even years				
( <del>51</del> )50	Massage Apprentice, Therapist	May 31	odd years				
( <del>52</del> )51	Master Esthetician	September 30	odd years				
( <del>53</del> )52	Medication Aide Certified	March 31	odd years				
( <del>54</del> )53	Nail Technologist	September 30	odd years				
( <del>55</del> )54	Nail Technology School	September 30	odd years				
( <del>56</del> )55	Naturopath/Naturopathic Physician	May 31	even years				
( <del>57</del> )56	Occupational Therapist	May 31	odd years				
( <del>58</del> )57	Occupational Therapy Assistant	May 31	odd years				
( <del>59</del> )58	Optometrist	September 30	even years				
( <del>60</del> )59	Osteopathic Physician and Surgeon, Online Prescriber	May 31	even years				
( <del>61</del> )60	Outfitter/Hunting Guide	May 31	even years				
( <del>62</del> )61	Pharmacy Class A-B-C-D-E, Online Contract Pharmacy	September 30	odd years				
( <del>63</del> )62	Pharmacist	September 30	odd years				
( <del>64</del> )63	Pharmacy Technician	September 30	odd years				
( <del>65</del> )64	Physical Therapist	May 31	odd years				
( <del>66</del> )65	Physical Therapist Assistant	May 31	odd years				
( <del>67</del> )66	Physician Assistant	May 31	even years				
( <del>68</del> )67	Physician and Surgeon, Online Prescriber	January 31	even years				
( <del>69</del> )68	Plumber						
	Apprentice, Journeyman, Master, Residential Master, Residential Journeyman	November 30	even years				
( <del>70</del> )69	Podiatric Physician	September 30	even years				
( <del>71</del> )70	Pre Need Funeral Arrangement Sales Agent	May 31	even years				
( <del>72</del> )71	Private Probation Provider	May 31	odd years				

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:

(a) Associate Marriage and Family Therapist licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(b) Associate Professional Counselor licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(c) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(d) Funeral Service Apprentice licenses shall be issued for a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(f)g Hearing Instrument Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examination, but a circumstance arose beyond the control of the licensee, to prevent the completion of the examination process.

(e)f Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

~~(g) [Vocational Rehabilitation Counselor licenses will be renewed annually on March 31.] Type I Foreign Trained Physician-Educator licenses will be issued initially for a one-year term and thereafter renewed every two years following issuance.~~

~~(h) Type II Foreign Trained Physician-Educator licenses will be issued initially for an annual basis and thereafter renewed annually up to four times following issuance if the licensee continues to satisfy the requirements described in Subsection 58-67-302.7(3) and completes the required continuing education requirements established under Section 58-67-303.~~

**R156-1-308c. Renewal of Licensure Procedures.**

The procedures for renewal of licensure shall be as follows:

(1) The Division shall send a renewal notice to each licensee at least 60 days prior to the expiration date shown on the licensee's license. The notice shall include directions for the licensee to renew the license via the Division's website.

~~(2)(a)~~ Except as provided in Subsection ~~[(2)(b)](4)~~, renewal notices shall be sent by mail deposited in the post office with postage prepaid, addressed to the last mailing address shown on the Division's automated license system. ~~[Such mailing shall constitute legal notice.]~~

~~(3) In accordance with Subsection 58-1-301.7(1), [It shall be the duty and responsibility of] each licensee is required to maintain a current mailing address with the Division. In accordance with Subsection 58-1-301.7(3), mailing to the last mailing address furnished to the Division constitutes legal notice.~~

~~(b)4~~ If a licensee has authorized the Division to send a renewal notice by email, a renewal notice may be sent by email to the last email address shown on the Division's automated license system. If selected as the exclusive method of receipt of renewal notices, [S]such mailing shall constitute legal notice. It shall be the duty and responsibility of ~~[a]each~~ licensee who authorizes the Division to send a renewal notice by email to maintain a current email address with the Division.

~~(3)5~~ Renewal notices shall provide that the renewal requirements are outlined in the online renewal process and that each licensee is required to document or certify that the licensee meets the renewal requirements prior to renewal.

~~(4)6~~ Renewal notices shall advise each licensee that a license that is not renewed prior to the expiration date shown on the license automatically expires and that any continued practice without a license constitutes a criminal offense under Subsection 58-1-501(1)(a).

~~(5)7~~ Licensees licensed during the last four months of a renewal cycle shall be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their license.

**R156-1-308g. Reinstatement of Licensure which was Active and in Good Standing at the Time of Expiration of Licensure - Requirements.**

The following requirements shall apply to reinstatement of licensure which was active and in good standing at the time of expiration of licensure:

(1) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the Division between

the date of the expiration of the license and 30 days after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the Division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and a late fee.

(2) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the Division between 31 days after the expiration of the license and two years after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the Division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and reinstatement fee.

(3) In accordance with Subsection 58-1-308(6)(a), if an application for reinstatement is received by the Division more than two years after the date the license expired and the applicant has not been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States during the time the license was expired, the applicant shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure ~~[and compliance with requirements and/or conditions of license reinstatement];~~

(b) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to engage in the occupation or profession for which reinstatement of licensure is requested; and

~~(c) [if the applicant has not been engaged in unauthorized practice of the applicant's occupation or profession following the expiration of the applicant's license,] pay the established license fee for a new applicant for licensure [; and~~

~~(d) if the applicant has been engaged in unauthorized practice of the applicant's occupation or profession following the expiration of the applicant's license, pay the current license renewal fee multiplied by the number of renewal periods for which the license renewal fee has not been paid since the time of expiration of license, plus a reinstatement fee].~~

(4) In accordance with Subsection 58-1-308(6)(b), if an application for reinstatement is received by the Division more than two years after the date the license expired but the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States shall:

(a) ~~[provide documentation of prior licensure in the State of Utah;~~

~~(b) ]~~provide documentation that the applicant has continuously, since the expiration of the applicant's license in Utah, been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;

(e)~~b~~ provide documentation that the applicant has completed or is in compliance with any renewal qualifications;

([d]e) provide documentation that the applicant's application was submitted within six months after reestablishing domicile within Utah or terminating full-time government service; and

([e]d) pay the established license renewal fee and the reinstatement fee.

**R156-1-50[2]1. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct;

(2) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company;

(3) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd." in the commercial use of the name of the limited partnership;

(4) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation;

(5) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing; or

(6) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", 2004, established by the Federation of State Medical Boards, which is hereby adopted and incorporated by reference.

**R156-1-502. Administrative Penalties.**

(1) In accordance with Subsection 58-1-401(5) and Section 58-1-502, except as otherwise provided by a specific chapter under Title R156, the following fine schedule shall apply to citations issued under the referenced authority:

TABLE

FINE SCHEDULE

FIRST OFFENSE

<u>Violation</u>	<u>Fine</u>
58-1-501(1)(a)	\$ 500.00
58-1-501(1)(c)	\$ 800.00

SECOND OFFENSE

58-1-501(1)(a)	\$1,000.00
58-1-501(1)(c)	\$1,600.00

THIRD OFFENSE

Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-1-502(2)(i)(iii).

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

**KEY: diversion programs, licensing, occupational licensing, supervision**

**Date of Enactment or Last Substantive Amendment: February 24, 2011**

**Notice of Continuation: March 1, 2007**

**Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-308; 58-1-501(4)**

**Commerce, Occupational and Professional Licensing  
R156-17b-310  
Exemption from Licensure - Physicians Dispensing Cosmetic Drug or Injectable Weight Loss Drug**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34887

FILED: 05/31/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This proposed rule filing implements changes made by the Legislature in S.B. 128 (2011 General Session). It also makes technical and cleanup changes. (DAR NOTE: S.B. 128 (2011) was effective 05/10/2011.)

**SUMMARY OF THE RULE OR CHANGE:** This filing expands the dispensing of cosmetic and weight loss drug exemption in the Pharmacy Practice Act implementation language to

include advanced practice registered nurses, physician assistants, and optometrists. Otherwise, the substance of the existing rule remains unchanged. The filing also makes technical and clarifying changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-17b-101 and Section 58-37-1 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a) and Subsection 58-17b-601(1)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The Division will incur minimal costs of approximately \$100 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. No additional costs or savings are anticipated by the addition of these additional professions that may dispense a cosmetic or weight loss drug.

♦ LOCAL GOVERNMENTS: The proposed amendments only apply to certain licensed professions who may dispense a cosmetic or weight loss drug. As a result, the proposed amendments do not apply to local governments.

♦ SMALL BUSINESSES: There may be a cost savings or loss to prescribing practitioners or optometrists depending on the dynamics of the free market. This impact cannot be estimated by the Division.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There may be a cost savings or loss to prescribing practitioners or optometrists depending on the dynamics of the free market. This impact cannot be estimated by the Division.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be a cost savings or loss to prescribing practitioners or optometrists depending on the dynamics of the free market. This impact cannot be estimated by the Division.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing implements a recent statutory change made in the 2011 General Session in expanding the exemptions in the Pharmacy Practice Act for which the fiscal impact to businesses has already been addressed. No fiscal impact to businesses is anticipated from other technical and clarifying changes in the rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.**

**R156-17b. Pharmacy Practice Act Rule.**

**R156-17b-310. Exemption from Licensure - [Physicians—] Dispensing of Cosmetic [Drug] or Injectable Weight Loss Drugs.**

(1) A cosmetic drug that can be dispensed by a [physician licensed under either Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, and]prescribing practitioner or optometrist in accordance with Subsection 58-17b-309[(1)(a)]includes:

———(a) is limited to Latisse.

(2) An injectable weight loss drug that can be dispensed by a [physician licensed under either Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, and]prescribing practitioner in accordance with Subsection 58-17b-309[(1)(b)]includes:

———(a) is limited to human chorionic gonadotropin.

(3) In accordance with Subsection 58-17b-309(4)(c), a [physician]prescribing practitioner or optometrist who chooses to dispense a cosmetic drug, or a prescribing practitioner who chooses to dispense an injectable weight loss drug, as listed in Subsections (1) and (2), to the [physician's]prescribing practitioner's or optometrist's patients shall have a label securely affixed to the container indicating the following minimum information:

(a) the name, address and telephone number of the [physician]prescribing practitioner or optometrist prescribing and dispensing the drug;

(b) the serial number of the prescription as assigned by the dispensing [physician]prescribing practitioner or optometrist;

(c) the filling date of the prescription or its last dispensing date;

(d) the name of the patient;

(e) the directions for use and cautionary statements, if any, which are contained in the prescription order or are needed;

(f) the trade, generic or chemical name, amount dispensed and the strength of dosage form; and

(g) the beyond use date.

(4) A [physician]prescribing practitioner or optometrist who chooses to dispense a cosmetic drug, or a prescribing practitioner who chooses to dispense an injectable weight loss drug, as listed in Subsections (1) and (2), shall keep inventory records for each drug dispensed and a prescription dispensing medication profile for each patient receiving a drug dispensed by the [physician]prescribing practitioner or optometrist. Those records shall be made available to the Division upon request by the Division.

(a) The general requirements for an inventory of drugs dispensed by a [physician]prescribing practitioner or optometrist include:

(i) the [physician]prescribing practitioner or optometrist shall be responsible for taking all required inventories, but may delegate the performance of taking the inventory to another person;

(ii) the inventory records must be maintained for a period of five years and be readily available for inspection;

(iii) the inventory records shall be filed separately from all other records;

(iv) the person taking the inventory and the [physician]prescribing practitioner or optometrist shall indicate the time the inventory was taken and shall sign and date the inventory with the date the inventory was taken. The signature of the [physician]prescribing practitioner or optometrist and the date of the inventory shall be documented within 72 hours or three working days of the completed initial, annual, change of ownership and closing inventory;

(v) the initial inventory shall be completed within three working days of the date on which the [physician]prescribing practitioner or optometrist begins to dispense a drug under Section 58-17b-309; and

(vi) the annual inventory shall be within 12 months following the inventory date of each year and may be taken within four days of the specified inventory date and shall include all stocks including out-of-date drugs.

(b) A prescription dispensing medication profile shall be maintained for every patient receiving a drug that is dispensed by a [physician]prescribing practitioner or optometrist in accordance with Section 58-17b-309 for a period of at least one year from the date of the most recent prescription fill or refill. The medication profile shall be kept as part of the patient's medical record and include, as a minimum, the following information:

(i) full name of the patient, address, telephone number, date of birth or age, and gender;

(ii) patient history where significant, including known allergies and drug reactions; and

(iii) a list of drugs being dispensed including:

(A) name of prescription drug;

(B) strength of prescription drug;

(C) quantity dispensed;

(D) prescription drug lot number and name of manufacturer;

(E) date of filling or refilling;

(F) charge for the prescription drug as dispensed to the patient;

(G) any additional comments relevant to the patient's drug use; and

(H) documentation that patient counseling was provided in accordance with Subsection (5).

(5) A [physician]prescribing practitioner or optometrist who is dispensing a cosmetic drug or injectable weight loss drug listed in Subsections (1) and (2) in accordance with Subsection 58-17b-309(4)(c), shall include the following elements when providing patient counseling:

(a) the name and description of the prescription drug;

(b) the dosage form, dose, route of administration and duration of drug therapy;

(c) intended use of the drug and expected action;

(d) special directions and precautions for preparation, administration and use by the patient;

(e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(f) techniques for self-monitoring drug therapy;

(g) proper storage;

(h) prescription refill information;

(i) action to be taken in the event of a missed dose;

(j) [physician]prescribing practitioner or optometrist comments relevant to the individual's drug therapy, including any other information specific to the patient or drug; and

(k) the date after which the prescription should not be taken or used, or the beyond use date.

(6) In accordance with Subsection 58-17b-309(4)(c), the medication storage standards that must be maintained by a [physician]prescribing practitioner or optometrist who dispenses a drug under Subsections (1) and (2) provides that the storage space shall be:

(a) kept in an area that is well lighted, well ventilated, clean and sanitary;

(b) equipped to permit the orderly storage of prescription drugs in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the drug inventory;

(c) equipped with a security system to permit detection of entry at all times when the [physician's]prescribing practitioner's or optometrist's office or clinic is closed;

(d) at a temperature which is maintained within a range compatible with the proper storage of drugs; and

(e) securely locked with only the [physician]prescribing practitioner or optometrist having access when the [physician's]prescribing practitioner's or optometrist's office or clinic is closed.

(7) In accordance with Subsection 58-17b-309(5), if a cosmetic drug or a weight loss drug listed in Subsections (1) and (2) requires reconstitution or compounding to prepare the drug for administration, the [physician]prescribing practitioner or optometrist shall follow the USP-NF 797 standards for sterile compounding.

(8) In accordance with Subsection 58-17b-309(5), factors that shall be considered by ~~[the Utah State Board of Pharmacy, the Utah Physicians Licensing Board, and the Utah Osteopathic Physician and Surgeon's Licensing Board]~~ licensing boards when determining if a drug may be dispensed by a [physician]prescribing practitioner or optometrist, include whether:

(a)(i) the drug has FDA approval;

(ii)(A) is prescribed and dispensed for the conditions or indication for which the drug was approved to treat; or

(B) the [physician]prescribing practitioner or optometrist takes full responsibility for prescribing and dispensing a drug for off-label use;

(b) the drug has been approved for self administration by the FDA;

(c) the stability of the drug is adequate for the supply being dispensed; and

(d) the drug can be safely dispensed by a prescribing practitioner or optometrist.

**KEY: pharmacists, licensing, pharmacies**  
**Date of Enactment or Last Substantive Amendment: [October 22, 2010]2011**  
**Notice of Continuation: February 23, 2010**  
**Authorizing, and Implemented or Interpreted Law: 58-17b-101; 58-17b-601(1); 58-37-1; 58-1-106(1)(a); 58-1-202(1)(a)**

**Commerce, Occupational and Professional Licensing**  
**R156-39a**  
**Alternative Dispute Resolution Providers Certification Act**

**NOTICE OF PROPOSED RULE**  
 (Repeal)  
 DAR FILE NO.: 34888  
 FILED: 05/31/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule filing implements H.B. 243 which was passed during the 2011 General Session. H.B. 243 (2011) deleted the governing statute, Title 58, Chapter 39a, with respect to alternative dispute resolution providers. Thus this rule is being repealed. (DAR NOTE: H.B. 243 (2011) was effective 05/10/2011.)

**SUMMARY OF THE RULE OR CHANGE:** Rule is being repealed in its entirety.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-39a-1 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**  
 ♦ **THE STATE BUDGET:** This rule is being repealed due to the 2011 General Session repealing the governing statute. As a result, there should be no additional costs or savings to the state budget beyond those identified in the fiscal analysis of H.B. 243 (2011).  
 ♦ **LOCAL GOVERNMENTS:** The proposed amendments only apply to formerly certified alternative dispute resolution providers. As a result, the proposed amendments do not apply to local governments. However, if a local government paid any fees for an alternative dispute resolution provider employed by the local government, fee savings shown below would apply to the local government.  
 ♦ **SMALL BUSINESSES:** This proposed rule change should not create any new costs for small businesses since the rule is being repealed in its entirety.  
 ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:**

The proposed repeal only applies to alternative dispute resolution providers who were previously certified through the Division. The Division has determined there should be a savings for these persons of \$63 every two years as they will no longer need to renew a certification. There should be no compliance costs incurred by any party as a result of the repeal of this rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed repeal only applies to alternative dispute resolution providers who were previously certified through the Division. The Division has determined there should be a savings for these persons of \$63 every two years as they will no longer need to renew a certification. At the time of the recent legislation, there were 43 currently certified alternative dispute resolution providers which results in an aggregate savings of \$2,709 every two years. There should be no compliance costs incurred by any party as a result of the repeal of this rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No fiscal impact to businesses is anticipated from this rule repeal, which conforms to a recent repeal of the authorizing statute.

**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 07/15/2011**

**THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011**

**AUTHORIZED BY: Mark Steinagel, Director**

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**R156. Commerce, Occupational and Professional Licensing.**  
~~[R156-39a. Alternative Dispute Resolution Providers Certification Act Rule.~~  
~~R156-39a-101. Title.~~  
 This rule is known as the "Alternative Dispute Resolution Providers Certification Act Rule".  
~~R156-39a-102. Definitions.~~  
 In addition to the definitions in Title 58, Chapters 1 and 39a, as used in Title 58, Chapters 1 and 39a or this rule:

~~(1) "Alternative dispute resolution provider" or "ADRP" means one who holds himself out as an arbitrator, negotiator, mediator, neutral fact finding expert, qualified neutral person, special master, conciliator, or any other title intended to cause a reasonable person to believe he is engaged in the alternative dispute resolution process.~~

~~(2) "Arbitration" means a forum in which one or more qualified neutral individuals, knowledgeable in the subject matter of the dispute, and educated, trained or experienced in the dispute resolution process, hears the positions, facts, and evidence presented by conflicting parties to a dispute, defines the issues, and makes a binding or non-binding decision regarding the matter in dispute.~~

~~(3) "Certified alternative dispute resolution provider" means an individual who is certified under Title 58, Chapter 39a as an alternative dispute resolution provider and designated as an arbitrator, mediator, or negotiator.~~

~~(4) "License" as used in Title 58, Chapter 39a means certification.~~

~~(5) "Negotiation" means a process in which there is an attempt to resolve a dispute or reach agreement in a matter employing the services of one or more negotiators who represent the interests of a party to a dispute or matter not agreed upon.~~

~~(6) "Mediation" is defined in Subsection 78B-6-202(8).~~

~~(7) "Neutral expert fact-finding" means a process in which the issue or issues in dispute are of such a technical or complex nature, and the assessment of the issues by the disputing parties and their respective experts is so divergent, that the services of a neutral expert are retained by the parties to the dispute to hear the issues and advise the parties to the dispute of their neutral and expert opinion for the purpose of improving the opportunity for settlement between the parties.~~

~~(8) "Qualified neutral person" means a person who is determined by the parties to a dispute as competent to act as an alternative dispute resolution provider.~~

~~(9) "Summary jury trial" is defined in Subsection 78B-6-202(9).~~

~~(10) "Unprofessional conduct" is defined in Subsection 58-1-501(2).~~

~~(11) "Use of special masters and related processes in civil disputes" means the use of individuals to perform duties assigned by a court or administrative agency in the resolution of disputes in accordance with the direction and authority of the court or administrative agency.~~

**~~R156-39a-103. Authority – Purpose.~~**

~~This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 39a.~~

**~~R156-39a-104. Organization – Relationship to Rule 156-1.~~**

~~The organization of this rule and its relationship to Rule 156-1 is as described in Section R156-1-107.~~

**~~R156-39a-301. Certificate Classifications.~~**

~~(1) In accordance with Subsection 58-39a-4(1), the Division shall issue certificates in the following classifications:~~

~~(a) Certified Alternative Dispute Resolution Provider – Arbitrator;~~

~~(b) Certified Alternative Dispute Resolution Provider – Mediator; and~~

~~(c) Certified Alternative Dispute Resolution Provider – Negotiator.~~

~~(2) Each classification shall be considered a separate certificate and shall be obtained by filing a separate application for each and paying the related fee.~~

**~~R156-39a-302a. Qualifications for Certification – Education and Training Requirements.~~**

~~In accordance with Subsections 58-1-203(1)(c) and 58-1-301(3), the education and training requirements for certification in Section 58-39a-5 are defined, clarified, or established as follows:~~

~~(1) An applicant to obtain certification as an arbitrator shall document completion of education and training as follows:~~

~~(a) satisfactory completion of 30 clock hours of education in arbitration which program of education may include the following subject material:~~

~~(i) arbitration language including the phrases and clauses necessary to initiate the procedure;~~

~~(ii) implementing the procedures required in adjudicating a proper award including conduct of proceedings, preparation, evidence, timeliness, records and documentation;~~

~~(iii) analyzing conflicts to narrow issues in dispute;~~

~~(iv) principles of dispute resolution;~~

~~(v) effective listening;~~

~~(vi) sensitivity and awareness of cross-cultural issues;~~

~~(vii) maintaining neutrality;~~

~~(viii) appropriate decision making processes;~~

~~(ix) control of the process and effective adjudication of the issues in dispute;~~

~~(x) historical perspective of arbitration;~~

~~(xi) critical thinking and reasoning skills;~~

~~(xii) various types of arbitration;~~

~~(xiii) effective writing; and~~

~~(b) verification that the applicant has satisfactorily served as an arbitrator in three separate cases or ten clock hours, whichever is greater.~~

~~(2) An applicant to obtain certification as a mediator shall document completion of education and training as follows:~~

~~(a) satisfactory completion of 30 clock hours of education in mediation which may include the following subject material:~~

~~(i) stages and value of conflict in empowering change;~~

~~(ii) principles of dispute resolution;~~

~~(iii) effective listening;~~

~~(iv) empathy and validation;~~

~~(v) sensitivity and awareness of cross-cultural issues;~~

~~(vi) maintaining neutrality;~~

~~(vii) identifying and reframing issues;~~

~~(viii) establishing trust and respect;~~

~~(ix) techniques for achieving agreement and settlement;~~

~~(x) creating a climate conducive to resolution, identifying options, reaching consensus, and working toward agreement;~~

~~(xi) shaping and writing agreements;~~

~~(xii) ethical standards for conduct of mediations; and~~

~~(b) verification that the applicant has satisfactorily served as a mediator in three separate cases or ten clock hours, whichever is greater.~~

~~(3) An applicant to obtain certification as a negotiator shall document completion of education and training as follows:~~

~~(a) satisfactory completion of 30 clock hours of education in negotiation which may include the following subject material:~~

- ~~(i) stages and value of conflict in empowering change;~~
- ~~(ii) principles of negotiation;~~
- ~~(iii) effective listening;~~
- ~~(iv) empathy and validation;~~
- ~~(v) sensitivity and awareness of cross-cultural issues;~~
- ~~(vi) maintaining neutrality;~~
- ~~(vii) identifying and reframing issues;~~
- ~~(viii) establishing trust and respect;~~
- ~~(ix) shaping and writing agreements;~~
- ~~(x) ethical standards for conduct of negotiations; and~~

~~(b) verification that the applicant has satisfactorily served as a negotiator in three separate cases or ten clock hours, whichever is greater.~~

**~~R156-39a-302b. Qualifications for Certification – Experience Requirements.~~**

~~In accordance with Subsections 58-1-203(1)(c) and 58-1-301(3), the experience requirements for certification in Section 58-39a-5 are defined, clarified, or established as follows:~~

~~(1) An applicant may be certified as an ADRP – Arbitrator without the necessity of completing the education and training requirements provided in R156-39a-302a(1) by providing evidence that the applicant has served as an arbitrator in cases involving not less than 32 clock hours.~~

~~(2) An applicant may be certified as an ADRP – Mediator without the necessity of completing the education and training requirements provided in R156-39a-302a(2) by providing evidence that the applicant has served as a mediator in cases involving not less than 32 clock hours.~~

~~(3) An applicant may be certified as an ADRP – Negotiator without the necessity of completing the education and training requirements provided in R156-39a-302a(3) by providing evidence that the applicant has served as a negotiator in cases involving not less than 32 clock hours.~~

**~~R156-39a-303. Renewal Cycle – Procedures.~~**

~~(1) In accordance with Subsection 58-1-308(1)(a), the renewal date for the two-year renewal cycle applicable to certificates under Title 58, Chapter 39a, is established by rule in Section R156-1-308a.~~

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

**~~KEY: licensing, arbitration, mediation, alternative dispute resolution~~**

**~~Date of Enactment or Last Substantive Amendment: November 22, 2010~~**

**~~Notice of Continuation: October 13, 2008~~**

**~~Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-39a-1]~~**

**Commerce, Occupational and  
Professional Licensing  
R156-46b  
Division Utah Administrative  
Procedures Act Rule**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34886

FILED: 05/31/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this filing is to classify certain adjudicative proceedings under the Utah Administrative Procedures Act (UAPA), specifically those initiated under the authority established by S.B. 186 (2011 General Session) in Subsection 58-37-6(4)(g) of the Controlled Substances Act. This filing makes a statutory citation authority correction in the designation of citation hearings under UAPA, in order to be consistent with additional citation authority granted to the Division under H.B. 243 (2011 General Session) as well as other legislation in past years. This filing reclassifies adjudicative proceedings addressing the failure to replace a qualifying agent under Section 58-63-306. These designations to classify adjudicative proceedings as informal proceedings are made to achieve greater efficiency as a Division while providing licensee respondents adequate due process for these types of proceedings. A previous trial basis in this arena with contractors has proven highly successful. A companion rule filing to Rule R156-1 addresses the designation of presiding officers for these types of adjudicative proceedings. (DAR NOTE: H.B. 243 and S.B. 186 were both effective 05/10/2011. The proposed rule filing to Rule R156-1 is under DAR No. 34885 in this issue, June 15, 2011, of the Bulletin.)

**SUMMARY OF THE RULE OR CHANGE:** This filing classifies as informal proceedings, licensure or disciplinary actions against an individual's Division of Occupational and Professional Licensing (DOPL) controlled substance license in response to the individual's Drug Enforcement Agency (DEA) registration being denied, revoked, surrendered, or suspended. Such registration is a prerequisite for controlled substance licensure. These types of cases should be fairly routine by nature, and thus the decision to classify them as informal proceedings. DOPL believes that few participants would anticipate a formal proceeding in this setting, particularly in light of the new statutory language. Those who do can file a motion to convert the proceeding to a formal proceeding. This filing also clarifies that all citation hearings

before the Division under Title 58 are informal adjudicative proceedings. It should be noted that occasionally, but rarely, these proceedings are converted to formal adjudicative proceedings. This filing also classifies as informal proceedings denial of renewal, denial of reinstatement, and other disciplinary actions, whether initiated by a Request for Agency Action or a Notice of Agency Action, to address a failure by a contract security company or armored car company to replace a qualifier as required under Section 58-63-306. These cases will also be quite routine by nature, and thus the decision to classify them as informal proceedings. Licensees who wish to avoid the impact of such an adjudicative proceeding merely need comply with Section 58-63-306 and replace their qualifier as required.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 58-1-106(1)(a) and Subsection 63G-4-102(6)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The informal process can be more efficient and less cumbersome to the participants. The informal process normally involves a decision based upon a file review, and thus does not include a hearing, unless a statute or rule requires or permits a hearing. An informal hearing is simplified and does not include the full trappings of a formal hearing. An informal proceeding does not normally include a hearing at the agency level, except where the statute requires or permits a hearing, such as in DOPL's citation hearings. However, if an individual wants a hearing where one is not afforded at the agency level, they will ultimately get one, albeit at a different stage - in the judicial forum, after timely pursuing agency review as a prerequisite, and timely filing a petition for judicial review. The judicial hearing is a trial de novo hearing before a District Court. By contrast, in a formal proceeding, there is a hearing at the agency level unless the case is settled by stipulation and order. The agency hearing would be followed by agency review as a prerequisite to judicial review. The judicial hearing is an on the record hearing before the Court of Appeals. DOPL and its attorneys in this process may experience a cost or cost savings based upon the classification of these proceedings as informal, depending on the facts and circumstances of each case and the options selected by the parties, as each case will vary. These costs or cost savings cannot be estimated. It is anticipated that generally this change will allow DOPL to most efficiently handle these types of cases in an informal setting affording Respondents adequate due process without unnecessarily devoting resources to formal proceedings.

◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensees within DOPL and as a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** The proposed amendments will not result in any additional costs or savings to small businesses except as noted below under the section "Other Persons" when they constitute a small business.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The informal process can be more efficient and less cumbersome to the participants. The informal process normally involves a decision based upon a file review, and thus does not include a hearing, unless a statute or rule requires or permits a hearing. An informal hearing is simplified and does not include the full trappings of a formal hearing. An informal proceeding does not normally include a hearing at the agency level, except where the statute requires or permits a hearing, such as in DOPL's citation hearings. However, if an individual wants a hearing where one is not afforded at the agency level, they will ultimately get one, albeit at a different stage - in the judicial forum, after timely pursuing agency review as a prerequisite, and timely filing a petition for judicial review. The judicial hearing is a trial de novo hearing before a District Court. By contrast, in a formal proceeding, there is a hearing at the agency level unless the case is settled by stipulation and order. The agency hearing would be followed by agency review as a prerequisite to judicial review. The judicial hearing is an on the record hearing before the Court of Appeals. Individuals going through this process as the Respondent may experience a cost or cost savings based upon the classification of these cases as informal proceedings, depending on the facts and circumstances of each case and the options selected by the parties, as each case will vary. These costs or cost savings cannot be estimated.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The informal process can be more efficient and less cumbersome to the participants. The informal process normally involves a decision based upon a file review, and thus does not include a hearing, unless a statute or rule requires or permits a hearing. An informal hearing is simplified and does not include the full trappings of a formal hearing. An informal proceeding does not normally include a hearing at the agency level, except where the statute requires or permits a hearing, such as in DOPL's citation hearings. However, if an individual wants a hearing where one is not afforded at the agency level, they will ultimately get one, albeit at a different stage - in the judicial forum, after timely pursuing agency review as a prerequisite, and timely filing a petition for judicial review. The judicial hearing is a trial de novo hearing before a District Court. By contrast, in a formal proceeding, there is a hearing at the agency level unless the case is settled by stipulation and order. The agency hearing would be followed by agency review as a prerequisite to judicial review. The judicial hearing is an on the record hearing before the Court of Appeals. Individuals going through this process as the Respondent may experience a cost or cost savings based upon the classification of these cases as informal proceedings, depending on the facts and circumstances of each case and the options selected by the parties, as each case will vary. These costs or cost savings cannot be estimated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The change in designation of certain matters to informal adjudicative proceedings should result in a cost savings to the Division and to those licensees affected; it is not expected to increase costs. Experience has shown that routine cases are able to be resolved informally. No fiscal impact to other businesses is anticipated by this change in procedure.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.  
R156-46b. Division Utah Administrative Procedures Act Rule.  
R156-46b-201. Formal Adjudicative Proceedings.**

(1) The following adjudicative proceedings initiated by a request for agency action are classified as formal adjudicative proceedings:

(a) denial of application for renewal of licensure, except denial of an application for renewal of a contractor, plumber or electrician license under Title 58, Chapter 55;

(b) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(5), except denial of an application for reinstatement of a contractor, plumber or electrician license under Title 58, Chapter 55;

(c) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(6)(b), except denial of an application for reinstatement of a contractor, plumber or electrician license under Title 58, Chapter 55;

(d) special appeals board held in accordance with Section 58-1-402;

(e) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as a formal adjudicative proceeding; and

(f) board of appeal held in accordance with Subsection ~~[58-56-8(3)]~~15A-1-207(3).

(2) The following adjudicative proceedings initiated by a Notice of Agency Action are classified as formal adjudicative proceedings:

(a) disciplinary proceedings, except ~~[disciplinary proceedings against a contractor, plumber or electrician licensed under Title 58, Chapter 55, which]~~those classified as informal proceedings under Section R156-46b-202 that result in the following sanctions:

(i) revocation of licensure;

(ii) suspension of licensure;

(iii) restricted licensure;

(iv) probationary licensure;

(v) issuance of a cease and desist order except when imposed by citation or by an order in a contested citation hearing;

(vi) administrative fine except when imposed by citation or by an order in a contested citation hearing; and

(vii) issuance of a public reprimand;

(b) unilateral modification of a disciplinary order; and

(c) termination of diversion agreements.

**R156-46b-202. Informal Adjudicative Proceedings.**

(1) The following adjudicative proceedings initiated by a request for agency action are classified as informal adjudicative proceedings:

(a) approval of application for initial licensure, renewal or reinstatement of licensure, or relicensure;

(b) denial of application for initial licensure or relicensure;

(c) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(6)(a);

(d) denial of application for reinstatement of restricted, suspended, or probationary licensure during the term of the restriction, suspension, or probation;

(e) approval or denial of application for inactive or emeritus licensure status;

(f) board of appeal under Subsection ~~[58-56-8(3)]~~15A-1-207(3);

(g) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11;

(h) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (g);

(i) approval or denial of request to surrender licensure;

(j) approval or denial of request for entry into diversion program under Section 58-1-404;

(k) matters relating to diversion program;

(l) ~~[contested]~~citation hearings held in accordance with ~~[Subsection 58-55-503(4)(b)]~~citation authority established under Title 58;

(m) approval or denial of request for modification of disciplinary order;

(n) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as an informal adjudicative proceeding;

(o) approval or denial of request for correction of procedural or clerical mistakes;

(p) approval or denial of request for correction of other than procedural or clerical mistakes;

(q) denial of application for renewal of: ~~[licensure as]~~

~~(i) a contractor, plumber, ~~[or]~~ electrician, or alarm company licensed under Title 58, Chapter 55;~~

~~(ii) a controlled substance licensee under Subsection 58-37-6(4)(g); and~~

~~(iii) a contract security company or armored car company for failure to replace a qualifier as required under Section 58-63-306;~~

(r) denial of application for reinstatement of: ~~[licensure as]~~

~~(i) a contractor, plumber, ~~[or]~~ electrician, or alarm company licensed under Title 58, Chapter 55;~~

~~(ii) a controlled substance licensee under Subsection 58-37-6(4)(g); and~~

~~(iii) a contract security company or armored car company for failure to replace a qualifier as required under Section 58-63-306;~~

(s) disciplinary proceedings against:

~~(i) a contractor, plumber, ~~[or]~~ electrician, or alarm company licensed under Title 58, Chapter 55;~~

~~(ii) a controlled substance licensee under Subsection 58-37-6(4)(g); and~~

~~(iii) a contract security company or armored car company for failure to replace a qualifier as required under Section 58-63-306; and~~

(t) all other requests for agency action permitted by statute or rule governing the Division not specifically classified as formal adjudicative proceedings in Subsection R156-46b-201(1).

(2) The following adjudicative proceedings initiated by a notice of agency action or request for agency action are classified as informal adjudicative proceedings:

(a) nondisciplinary proceeding which results in cancellation of licensure;

(b) disciplinary sanctions imposed in a memorandum of understanding with an applicant for licensure; and

(c) disciplinary proceedings against:

~~(i) a contractor, plumber, ~~[or]~~ electrician, or alarm company licensed under Title 58, Chapter 55;~~

~~(ii) a controlled substance licensee under Subsection 58-37-6(4)(g); and~~

~~(iii) a contract security company or armored car company for failure to replace a qualifier as required under Section 58-63-306.~~

**KEY:** administrative procedures, government hearings, occupational licensing

**Date of Enactment or Last Substantive Amendment:** [April 25, 2011]

**Notice of Continuation:** January 31, 2011

**Authorizing, and Implemented or Interpreted Law:** 63G-4-102(6); 58-1-106(1)(a)

## Corrections, Administration R251-102 Release of Communicable Disease Information

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34856

FILED: 05/19/2011

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed amendment updates statutory citation, as well as amends the rule to allow the provision of AIDS/HIV test results to the Department of Health as required by statute.

**SUMMARY OF THE RULE OR CHANGE:** The change incorporates Sections 63G-3-201 and 64-13-10 into the rule authorization references. The rule also allow the department to provide the results of AIDS/HIV test results to the Department of Health, as required in Section 64-13-36.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63G-3-201 and Section 64-13-10 and Section 64-13-36

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There are no costs or savings to the state budget. Because a mechanism already exists to provide medical file information to authorized individuals, providing a subset of that information to the Department of Health will be a cost neutral addition.

◆ **LOCAL GOVERNMENTS:** There are no costs or savings to local government. Because a mechanism already exists to provide medical file information to authorized individuals, providing a subset of that information to the Department of Health will be a cost neutral addition.

◆ **SMALL BUSINESSES:** There are no costs or savings to small businesses. Because a mechanism already exists to provide medical file information to authorized individuals, providing a subset of that information to the Department of Health will be a cost neutral addition.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs for other persons. Because a mechanism already exists to provide medical file information to authorized individuals, providing a subset of that information to the Department of Health will be a cost neutral addition.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs associated with this rule change. Because a mechanism already exists to provide medical file information to authorized individuals, providing a subset of that information to the Department of Health will be a cost neutral addition.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Aside from the statutory citation updates, this rule is required by updated state statute. The process is already implemented, and, as it does not involve the private sector, there are no anticipated impacts on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 CORRECTIONS  
 ADMINISTRATION  
 14717 S MINUTEMAN DR  
 DRAPER, UT 84020-9549  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Michael Haddon by phone at 801-545-5913, by FAX at 801-545-5726, or by Internet E-mail at mhaddon@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/11/2011

AUTHORIZED BY: Thomas Patterson, Executive Director

**R251. Corrections, Administration.**

**R251-102. Release of Communicable Disease Information.**

**R251-102-1. Authority and Purpose.**

(1) This rule is authorized under Sections 63G-3-201, 64-13-10, and 64-13-36(3)(a) of the Utah Code.

(2) The purpose of this rule is to designate the persons who will be permitted access to information in Department of Corrections inmate medical files.

**R251-102-2. Definitions.**

(1) "AIDS" means Acquired Immunodeficiency Syndrome.

(2) "Communicable Disease" means any of a group of diseases easily transmitted from one person to another.

(3) "HIV" means Human Immunodeficiency Syndrome.

(4) "inmates" means offenders in the secure facilities of the Department.

**R251-102-3. Access to Information in Medical Files.**

(1) Information in an inmate's medical file may include:

(a) results of tests conducted for communicable diseases, including AIDS and HIV; and

(b) information self-admitted by an inmate.

(2) The Department shall provide information regarding communicable diseases to:

(a) the Board of Pardons and Parole;

(b) designated Department Adult Probation and Parole agents; and

(c) other Department employees, if necessary, based on legitimate penological interests as determined by a division director in consultation with Clinical Services.

(3) Results of AIDS and HIV tests shall be provided to the Department of Health as outlined in Section 64-13-36.

**KEY: medical records, communicable diseases, corrections**

**Date of Enactment or Last Substantive Amendment: [~~January 4, 2001~~]2011**

**Notice of Continuation: November 30, 2010**

**Authorizing, and Implemented or Interpreted Law: 64-13-10; 64-13-36; 63G-3-201**

**Corrections, Administration  
 R251-106**

**Media Relations**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34857

FILED: 05/19/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** First, the amendment updates statutory citations. Second, the amendment provides the appropriate titles for the department positions listed within the rule. Finally, the amendment updates the rule to reflect department policy that the media needs to work through the department's public information officer or executive director in order to access correctional institutions or inmates.

**SUMMARY OF THE RULE OR CHANGE:** This change updates the rule authorization statutory references including Sections 63G-3-201 and 64-13-10, Subsection 63G-2-201(12), and Section 63G-2-204. The proposed amendment corrects the reference from "Director of Public Information" to "Public Information Officer." Finally, the rule clarifies department policy that the media must work with the Public Information Officer or the department Executive Director in order to access correctional institutions or inmates.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63-2-102 and Section 63G-3-201 and Section 64-13-10 and Section 64-13-17 and Section 77-19-11

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There are no costs or savings to the state budget. The amendments reflect current department policy and practice followed over the prior four years.

♦ **LOCAL GOVERNMENTS:** There are no costs or savings to local government. The amendments reflect current department policy and practice followed over the prior four years.

♦ **SMALL BUSINESSES:** There are no costs or savings to small businesses. The amendments reflect current department policy and practice followed over the prior four years.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or savings to other persons. The amendments reflect current department policy and practice followed over the prior four years.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. The amendments reflect current department policy and practice followed over the prior four years.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The amendments reflect updated statutory citations and provides clarity regarding how the media accesses correctional institutions and inmates. As such, there are no anticipated fiscal impacts on businesses.

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

CORRECTIONS  
ADMINISTRATION  
14717 S MINUTEMAN DR  
DRAPER, UT 84020-9549  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Michael Haddon by phone at 801-545-5913, by FAX at 801-545-5726, or by Internet E-mail at mhaddon@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011**

**THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2011**

**AUTHORIZED BY: Thomas Patterson, Executive Director**

**R251. Corrections, Administration.****R251-106. Media Relations.****R251-106-1. Authority and Purpose.**

(1) This rule is authorized under Sections ~~[63-46a-3]~~[63G-3-201, 64-13-[17]10, [63-2-102]63G-2-201(12), 63G-2-204, and 77-19-11, of the Utah Code.

(2) The purpose of this rule is to define the UDC's policy under which persons representing the news media shall be allowed

access to correctional institutions, inmates and other supervised offenders. It is also intended to define UDC actions when a need exists for the safeguarding of information.

**R251-106-3. Standards and Procedures.**

(1) It is the policy of the UDC to permit press access to facilities, inmates, supervised offenders and information. Access shall be:

(a) consistent with the requirements of the constitutions and laws of the United States and State of Utah;

(b) at a level no more restrictive than that allowed the general public.

(2) Access by news media members shall be restricted:

(a) when the UDC finds it necessary to further its legitimate governmental interests, or to maintain safety, security, order, discipline and program goals;

(b) to conform with statutory and constitutional privacy requirements as interpreted by binding case precedent;

(c) when information or access would be contrary to state interests on matters under litigation; or

(d) to safeguard the privacy interests of those under the supervision of the UDC.

(3) The UDC shall make all reasonable efforts to see that the public is kept informed concerning its operations by:

(a) participating and cooperating with the news media to communicate the UDC's mission, goals, policy, procedures, operation, and activities;

(b) providing information in a timely manner, while avoiding disruption or compromise of the UDC's legitimate interests; and

(c) releasing information in accordance with the policy, procedures and requirements of law to provide the public with knowledge about:

(i) UDC philosophy, operations and activities; and

(ii) significant issues and problems facing the UDC.

(4) Inmates shall not be denied the opportunity to communicate with the news media. However, the UDC reserves the right to regulate the manner in which the communication may occur, including:

(a) defining the channels of communication and the circumstances of their use; and

(b) temporarily suspending communication during exigent circumstances including:

(i) riots;

(ii) hostage situations;

(iii) fires or other disasters;

(iv) other inmate disorders; or

(v) emergency lock-down conditions.

(5) Because the UDC faces special management problems with the prison's operation from face-to-face interviews between inmates and the news media:

(a) news media members' requests for face-to-face interviews shall be reviewed on a case-by-case basis by considering the mental competence of the inmate, pending appeals, safety, security, and management issues of the institution;

(b) requests for face-to-face interviews shall be submitted to the Public Information Officer~~[Director of Public Information]~~; and

(c) interviews which the UDC determines will jeopardize its legitimate interests, or those of a prison facility, shall not be approved.

(6) Access to executions by the news media shall be consistent with the requirements of Section 77-19-11, of the Utah Code.

(7) News media members shall obtain UDC-issued media identification or shall receive special permission for access to prison property or other UDC Facilities. Special permission may be granted only by the [~~Institutional Operations Associate Warden, Warden, or Division Director, Public Information Officer~~] Director of Public Information, Deputy Director, or Executive Director.

(8) No equipment shall be taken inside the facility unless specifically approved by the [~~Institutional Operations Associate Warden, Warden, or Division Director, Director of Public Information~~] Public Information Officer, Deputy Director, or Executive Director. Filming or other recording visits are separate issues and involve individual consideration and decisions.

(9) Ground rules for each opportunity for facility access, filming or recording shall be determined prior to entry.

(10) Access may be terminated at any time without warning, if:

(a) the conditions, ground rules, or other regulations are violated by news media members involved in the access opportunity;

(b) an inmate disorder or other disruption develops;

(c) staff members detect problems created by the media visit which threaten security, safety or order in the facility; or

(d) other reasons related to the legitimate interests of the UDC are present.

(11) Deliberate violation of regulations or other serious misconduct during a facility visit:

(a) shall result in the temporary loss of UDC-issued media identification; and

(b) may result in the permanent loss of UDC-issued media identification.

**KEY: corrections, press, media, prisons**

**Date of Enactment or Last Substantive Amendment:** [~~May 1, 2007~~] 2011

**Notice of Continuation:** September 19, 2006

**Authorizing, and Implemented or Interpreted Law:** 63-2-102; [~~63-46a-3~~] 63G-3-201; 64-13-10; 64-13-17; 77-19-11

**Corrections, Administration**  
**R251-112**  
**Americans With Disabilities Act**  
**Implementation and Complaint Process**

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 34853

FILED: 05/19/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The department is filing this rule pursuant to the business impact review. The department is recommending repeal of this rule after consultation with the Department of Human Resource Management (DHRM). All ADA processes are now being addressed through DHRM. DHRM staff indicated the department should no longer have this rule in place.

**SUMMARY OF THE RULE OR CHANGE:** This rule is repealed in its entirety.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 67-19-32 and Sections 34A-5-101 to 35A-5-108

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There will be no cost or savings to the state budget because ADA procedures will still exist; they will be administered by DHRM rather than Corrections.

◆ **LOCAL GOVERNMENTS:** There will be no cost or savings to local governments because ADA procedures will still exist; they will be administered by DHRM rather than Corrections.

◆ **SMALL BUSINESSES:** There will be no cost or savings to small businesses because ADA procedures will still exist; they will be administered by DHRM rather than Corrections.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no cost or savings to other persons because ADA procedures will still exist; they will be administered by DHRM rather than Corrections.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be no compliance costs to affected persons because ADA procedures will still exist; they will be administered by DHRM rather than Corrections.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no fiscal impacts anticipated on businesses.

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

CORRECTIONS  
ADMINISTRATION  
14717 S MINUTEMAN DR  
DRAPER, UT 84020-9549  
or at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Michael Haddon by phone at 801-545-5913, by FAX at 801-545-5726, or by Internet E-mail at mhaddon@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2011

AUTHORIZED BY: Thomas Patterson, Executive Director

**R251. Corrections, Administration.****[R251-112. Americans With Disabilities Act Implementation and Complaint Process.****R251-112-1. Authority and Purpose.**

(1) This rule is promulgated pursuant to Section 63-46a-3(2) of the State Administrative Rulemaking Act. As required by 28 CFR 35.107 (1992 ed.), the Department of Corrections, as a public entity that employs more than 50 persons, adopts, defines, and publishes the complaint procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by the applicable provisions of the Americans With Disabilities Act.

(2) The applicable provisions of 29 C.F.R. 1630 implement the Americans With Disabilities Act, 42 U.S.C. 12101 through 12213, which provide that no qualified individual with a disability, by reason of such disability, be denied employment, be excluded from participation in, or be denied the benefits of services, programs, or activities of the Department of Corrections.

**R251-112-2. Definitions.**

(1) "ADA" means Americans With Disabilities Act.

(2) "ADA Coordinator" means the Department designee who has the responsibility for the Department's compliance with ADA.

(3) "ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

- (a) Department of Human Resource Management;
- (b) Division of Risk Management;
- (c) Division of Facilities Construction Management; and
- (d) Office of the Attorney General.

(4) "Department" means the Department of Corrections.

(5) "Disability" means with respect to an individual with a physical or mental impairment that substantially limits one or more major life activities as defined by ADA.

(6) "HRM Representative" means the Director or designee of the Department of Human Resource Management (DHRM) field office within the Department who has responsibility for the Department's compliance with ADA as it relates to employees.

(7) "Qualified person with a disability" means an individual with a disability who meets the skill, experience, education, and other job-related requirements of a position held or desired, and who, with or without reasonable accommodation, is able to perform the essential functions of a job or meets the criteria

established for visiting offenders or accessing other programs and services offered.

**R251-112-3. Filing of Complaints.**

(1) Any qualified individual with a disability should file a complaint with the Department no later than 60 days of the alleged act of discrimination in order to expedite resolution of the complaint.

(2) The complaint shall be filed with the Department's ADA Coordinator in writing or in another accessible format suitable to the individual.

(3) Each complaint should:

(a) include the individual's name, address, and phone number;

(b) include the nature and extent of the individual's disability;

(c) describe the Department's alleged discriminatory action in sufficient detail to inform the Department of the nature and date of the alleged violation;

(d) describe the action and any accommodation desired; and

(e) be signed by the individual or by the individual's representative.

(4) Complaints filed on behalf of classes of third parties should describe or identify by name, if possible, the alleged victims of discrimination.

**R251-112-4. Investigation of Complaint.**

(1) The ADA Coordinator or designee and the HRM representative shall use reasonable diligence to investigate complaints received and obtain and document all relevant facts. This may include gathering all information listed in Section R251-112-3(3), if it is not made available by the individual.

(2) When conducting the investigation, the ADA Coordinator or designee may seek assistance from the Department's legal, human resource, budget staff and division directors in determining what action, if any, shall be taken on the complaint. The ADA Coordinator or designee may also consult with the Executive Director in reaching a recommendation.

(3) The ADA Coordinator or designee and the DHRM representative shall consult with the ADA State Coordinating Committee before making any decision that would involve:

(a) an expenditure of funds which is not absorbable within the Department's budget and would require appropriation authority;

(b) facility modifications which require an expenditure of funds which is not absorbable within the Department's budget and would require appropriation authority; or

(c) reclassification or reallocation in grade.

**R251-112-5. Issuance of Decision.**

(1) Within 30 working days after receiving the complaint, the ADA Coordinator or designee or the DHRM representative or designee shall issue a decision outlining in writing or in another accessible format suitable to the individual stating what action, if any, shall be taken on the complaint.

(2) If the ADA Coordinator or designee or the DHRM representative or designee is unable to reach a decision within the

30 working day period, the ADA Coordinator or the DHRM representative or designee shall notify the individual in writing, or by another accessible format suitable to the individual, why the decision is being delayed and what additional time is needed to reach a decision.

**R251-112-6. Appeals.**

(1) The individual may appeal the decision of the ADA Coordinator or designee or the DHRM representative or designee by filing an appeal within ten working days from the receipt of the decision.

(2) The appeal shall be filed in writing or another accessible format suitable to the individual with the Executive Director of the Department. The Executive Director may name a designee other than the ADA Coordinator to assist on the appeal.

(3) The appeal shall describe in sufficient detail why the ADA Coordinator's decision does not meet the individual's needs without undue hardship to the Department, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

(4) The Executive Director or designee shall review the decision and the appeal. The Executive Director may direct additional investigation as necessary before arriving at an independent conclusion.

(5) The Executive Director or designee may consult with the State ADA Coordinating Committee prior to making any decision that would involve:

(a) an expenditure of funds which is not absorbable and would require appropriation authority;

(b) facility modifications; or

(c) reclassification or reallocation in grade;

(6) The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another accessible format suitable to the individual.

(7) If the Executive Director or designee is unable to reach a decision within the ten working day period, the Executive Director shall notify the individual in writing or by another accessible format suitable to the individual why the decision is being delayed and the additional time needed to reach a decision.

**R251-112-7. Classification of Records.**

The record of each complaint and appeal, and all written records produced or received as part of such actions, shall be classified as protected as defined under Section 63-2-304, until the Executive Director, ADA Coordinator, DHRM representative, or their designees issue the decision at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63-2-302, or controlled as defined in Section 63-2-303. All other information gathered as part of the complaint record shall be classified as private information.

**R251-112-8. Relationship to Other Laws.**

This rule does not prohibit or limit the use of remedies available to individuals under the Utah State Anti-Discrimination Complaint Procedures; the Federal Americans with Disabilities Act Complaint Procedures; or any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

**KEY: complaint procedures, disabled persons**

**Date of Enactment or Last Substantive Amendment: March 11, 2008**

**Notice of Continuation: November 13, 2007**

**Authorizing, and Implemented or Interpreted Law: 67-19-32; 34A-5-101 to 34A-5-108; 63-46a-3(2)]**

Corrections, Administration

**R251-113**

Distribution of Reimbursement for the  
Felony Probation Inmate Costs  
Reimbursement Program/Fund

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 34854

FILED: 05/19/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The department is filing the rules pursuant to the business impact review. During this review, the department noted it no longer has rulemaking authority related to this rule, and no longer has statutory obligation to administer this program.

**SUMMARY OF THE RULE OR CHANGE:** During the 2008 Legislative Session, Section 64-13c-303 was amended transferring responsibility of this program to the Commission on Criminal and Juvenile Justice and the Division of Finance. Therefore, this rule is repealed in its entirety.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 64-13-303

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There are no costs or savings to the state budget. The statutory change was effected in 2008 and responsibility was simply transferred to other state agencies.

◆ **LOCAL GOVERNMENTS:** There are no costs or savings to local governments. The statutory change was effected in 2008 and responsibility was simply transferred to other state agencies.

◆ **SMALL BUSINESSES:** There are no costs or savings to small businesses. The statutory change was effected in 2008 and responsibility was simply transferred to other state agencies.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or savings to other persons. The statutory change was effected in 2008 and responsibility was simply transferred to other state agencies.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs. The statutory change was effected in 2008 and responsibility was simply transferred to other state agencies.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This repeal has no fiscal impact on business. The funds for this program have not been impacted by this change and only involve state and local government.

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

CORRECTIONS  
ADMINISTRATION  
14717 S MINUTEMAN DR  
DRAPER, UT 84020-9549  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Michael Haddon by phone at 801-545-5913, by FAX at 801-545-5726, or by Internet E-mail at mhaddon@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2011

AUTHORIZED BY: Thomas Patterson, Executive Director

#### **R251. Corrections, Administration.**

~~[R251-113. Distribution of Reimbursement for the Felony Probation Inmate Costs Reimbursement Program/Fund.~~

#### **R251-113-1. Authority and Purpose.**

~~(1) This rule is provided in accordance with Section 64-13e-301, et seq.~~

~~(2) As required by Subsection 64-13e-303(1)(b), the purpose of this rule is to establish procedures for the distribution of appropriated monies received from the Utah State legislature for the Jail Reimbursement Program.~~

~~(3) As required by legislative intent language from the General Session 2004, Senate Bill SB-1, Jail Reimbursement, lines 322-334 and from the General Session 2006, SB-50, Jail Funding Amendments.~~

#### **R251-113-2. Definitions.**

~~In addition to terms defined in Section 64-13e-101,~~

~~(1) "Contract State Inmate" means an inmate who has been sentenced to the Utah Department of Corrections and at the pleasure of the Division of Institutional Operations (DIO) is selected to complete all, or a portion of, their court ordered incarceration in a county correctional facility under contract with the Department.~~

~~(2) "Core inmate incarceration costs (Core Rate)" means the county correctional facility's direct costs of incarcerating an inmate, including housing, feeding, clothing, programming, and may include capital infrastructure depreciation.~~

~~(a) Core Rate is also the "single-reimbursement-rate" as provided in Section 64-13e-302.~~

~~(b) Core Rate does not include costs of inmate transportation services or medical care; nor programming for felony probationers.~~

~~(3) "Credit for Time Served" means time served in jail prior to judgement, sentence, and commitment.~~

~~(4) "Current expenses" means the actual costs of jail salaries, benefits, food, clothing, maintenance, utilities, education, miscellaneous inmate expenses, and may include capital infrastructure depreciation expended during the most recent budget year.~~

~~(5) "Fund" means the monies allocated by the legislature for the Felony Probation Inmate Costs (Inmate Costs Reimbursement Program) for the current fiscal year.~~

~~(6) "Felony Probation Inmate" means a person who may serve a period of time, not to exceed one year in a county jail designated by the department, after considering any recommendation by the court as to which jail the court finds most appropriate, as provided in 77-18-1(8)(v) Felony Probationer.~~

~~(7) "Transportation cost" means mileage rate, salary and benefit costs of the transporting officer(s) expended, which are not included under core rate costs during the most recent budget year.~~

~~(8) "Capital Infrastructure Depreciation" means building costs in excess of \$5,000 including: roofing, paving, HVAC systems, plumbing, structural repairs, and any repairs that are depreciated. It does not include: vehicles, mowers, washers and dryers, ovens and microwaves, dishwashers, landscaping, computers, furniture, bedding, nor any capital expenditure under \$5,000 per item.~~

#### **R251-113-3. Reimbursement Rates - General.**

~~Pursuant to Section 64-13e-302:~~

~~(1) the procedures for setting the rate will be followed as written in the statute and will take place prior to July 1 of each year after the information is gathered from each of the contracting counties.~~

~~(2) the Rate Setting Committee shall negotiate a single reimbursement rate, applicable to all counties, which shall consist of daily core inmate incarceration costs and shall be called the "Core Rate";~~

~~(3) each county shall negotiate directly with the Department to establish appropriate rates for the transportation services and medical care for inmates housed, including Felony Probationers committed to a county jail, but shall not be reimbursed for said costs per SB50, Jail Funding Amendments, General Session 2006;~~

~~(4) the three parts of the setting reimbursement rate are:~~

- ~~(a) the core rate;~~
- ~~(b) county medical costs; and~~
- ~~(c) county transportation costs.~~

#### **R251-113-4. County Information Requirement.**

~~(1) On or before April 15, each county shall provide the Department with the following budget expenditure information covering the most recent full County Fiscal Year ending on December 31st:~~

~~(a) the full costs and expenses required to operate the jail for the current year;~~

- \_\_\_\_\_ (b) the cost of medical care provided to all inmates housed in the jail for the current year;
- \_\_\_\_\_ (c) the cost of transportation services provided during the current year; and
- \_\_\_\_\_ (d) the number of "inmate days" for:
  - \_\_\_\_\_ (i) state-contract inmates;
  - \_\_\_\_\_ (ii) felony condition-of-probation inmates;
  - \_\_\_\_\_ (iii) all other county inmates, including all other inmates within the facility not already listed;
  - \_\_\_\_\_ (iv) federal inmates;
  - \_\_\_\_\_ (v) electronically monitored inmates; and
  - \_\_\_\_\_ (vi) the number of total inmate days.
- \_\_\_\_\_ (2) The Department may audit the information received from each county.

**R251-113-5. Computation of Reimbursement Rates.**

- \_\_\_\_\_ (1) A single core rate shall be used as the basis for all counties as the rate for cost-recovery of housing state inmates.
  - \_\_\_\_\_ (a) It will be computed by taking a list of the total information received from all counties, categorized as total inmate days and total current expenses; and then taking
  - \_\_\_\_\_ (b) total current expenses, which shall then be divided by the total inmate days, resulting in a computed core rate.
  - \_\_\_\_\_ (c) This computed core rate shall be used as the single reimbursement rate for all counties housing contract state prison inmates during the year whether the inmate is a Contract State Inmate or Felony Probation Inmate.
- \_\_\_\_\_ (2) In addition, a separate county rate shall be calculated to reflect medical and transportation expenses incurred by each county. This rate is required by Section 64-13e-101, but shall not be reimbursed pursuant to SB50, General Session 2006. This separate county rate will be computed by:
  - \_\_\_\_\_ (a) taking the total medical costs for each county and dividing that total by the inmate days of each county, minus any contract prisoner; and
  - \_\_\_\_\_ (b) taking the total transportation cost for each county and dividing that total by the inmate days for each county minus any contract prisoners.

**R251-113-6. Payment for Condition of Probation Inmates.**

- \_\_\_\_\_ (1) The fund may reimburse each county at seventy-percent of the core reimbursement rate established by the Rate-Setting Committee and approved by the Legislature.
- \_\_\_\_\_ (2) Fund reimbursement is limited by the following conditions:
  - \_\_\_\_\_ (a) "Credit for Time Served" reimbursement can only be made beginning on the first day of incarceration after sentencing, less any credit for time served awarded by the Courts, pursuant to 77-18-1(11a).
  - \_\_\_\_\_ (b) "Probation Terminated Unsuccessful" is not eligible for reimbursement because there is no probation currently in place pursuant to 77-18-1(10).
  - \_\_\_\_\_ (c) "Plea in Abeyance" is not eligible for reimbursement as the conviction and sentencing have been suspended pursuant to 77-18-1(2).
  - \_\_\_\_\_ (d) "Electronic Monitoring" is not eligible for reimbursement pursuant to 77-18-1(16).

- \_\_\_\_\_ (e) "3-Day Holds" are not eligible for reimbursement because the felon is being incarcerated on a probation violation, but no sentence has yet been rendered on the Order to Show Cause.
- \_\_\_\_\_ (f) "Parole Violations" are not eligible for reimbursement because the felon is being incarcerated on a parole violation through the Board of Pardons.
- \_\_\_\_\_ (g) "Immigration and Customs Enforcement Holds" are not eligible for reimbursement beyond the number of days sentenced by the Courts, even if the probation is still in effect.
- \_\_\_\_\_ (h) "Juvenile court Orders to Show Cause" are not eligible for reimbursement even if the juvenile serves in a correctional institution on probation because juveniles are sentenced under Title 78, not Title 77.
- \_\_\_\_\_ (i) Counties shall not be eligible for reimbursement for housing felony probation inmates who have been ordered by the court to reimburse the county for the cost associated with their incarceration whether ordered to pay a portion or the full costs of incarceration.
- \_\_\_\_\_ (3) The fund may provide reimbursement for the following situations:
  - \_\_\_\_\_ (a) "Orders to Show Cause" may be reimbursed only when sentenced by the courts to a county correctional facility, as a condition of probation. If the probation has been revoked, it must be reinstated.
  - \_\_\_\_\_ (b) Consecutive sentencees may be reimbursed as ordered by the courts, within the same court case or in different court cases, as long as all criterion are met.
  - \_\_\_\_\_ (c) "Drug Court" or "Mental Health Court" cases may be reimbursed, once the case formerly listed as Plea in Abeyance, has been formally sentenced to a county correctional center as a condition of probation.
  - \_\_\_\_\_ (d) "Probation" required in a condition of probation court case may include formal or informal probation, such as: Adult Parole and Probation, Court/Bench Probation, or Contract Probation provided by an private entity per Subsection 77-18-1(2)(a).
  - \_\_\_\_\_ (e) Back billings or late billings, when new felons have been found, may be reimbursed only within the same fiscal year period.
  - \_\_\_\_\_ (f) All inmate days will be reimbursed beginning on the first day of incarceration after sentencing, but never the last day. All inmates must be in their beds at 11:59 p.m. to be eligible for reimbursement.
  - \_\_\_\_\_ (g) All monthly billings require the following inmate information:
    - \_\_\_\_\_ (i) name;
    - \_\_\_\_\_ (ii) court case number;
    - \_\_\_\_\_ (iii) sentencing date;
    - \_\_\_\_\_ (iv) incarceration date;
    - \_\_\_\_\_ (v) release date; and
    - \_\_\_\_\_ (vi) total inmate days for the month.

**R251-113-7. Notice of Fund Shortfall.**

- \_\_\_\_\_ (1) Projections for the jail reimbursement fund shall be done monthly.
- \_\_\_\_\_ (2) Should it be projected that the appropriated fund will be spent prior to the end of the fiscal year, the Department shall notify the Legislative Fiscal Analyst Office in writing. The report will explain the factors used to determine the shortfall.

~~(3) The Department shall also notify each participating county jail that the fund will be short.~~

~~(4) At the point the Department realizes the fund shall fall short, the department shall collect all billings against the fund and hold them until the end of the current fiscal year. At the end of the current fiscal year, the remaining funds shall be dispersed at an equal percentage across all participating counties.~~

~~KEY: county jails, reimbursement~~

~~Date of Enactment or Last Substantive Amendment: October 24, 2006~~

~~Notice of Continuation: August 30, 2006~~

~~Authorizing, and Implemented or Interpreted Law: 64-13-303]~~

## Corrections, Administration R251-304 Contract Procedures

### NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 34855

FILED: 05/19/2011

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The department is filing this rule change pursuant to the business impact review. The primary impact of the repeal of the department's contract procedures rule will be to reduce regulation on the private sector. As the department reviewed its rules, it found most other state agencies do not have a rule governing their contract processes. The state contract process is primarily governed by the Division of Purchasing. Any requirements needed by the department, in terms of contracting, are achieved within the terms and scope of the contract agreement. The contract terms and scope are agreed to by both parties to the contract. This rule is not necessary to enforce these terms.

**SUMMARY OF THE RULE OR CHANGE:** The state contract process is primarily governed by the Division of Purchasing. Any requirements needed by the department, in terms of contracting, are achieved within the terms and scope of the contract agreement. The contract terms and scope are agreed to by both parties to the contract. Therefore, this rule is repealed in its entirety.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 64-13-25

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There are no costs or savings to the state budget. Rules and regulation related to state contracts

will be relegated to the Division of Purchasing or defined within the terms of the contract.

♦ **LOCAL GOVERNMENTS:** There are no costs or savings to local government. Rules and regulation related to state contracts will be relegated to the Division of Purchasing or defined within the terms of the contract.

♦ **SMALL BUSINESSES:** There are no costs or savings to small businesses. Rules and regulation related to state contracts will be relegated to the Division of Purchasing or defined within the terms of the contract.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or savings to other persons. Rules and regulation related to state contracts will be relegated to the Division of Purchasing or defined within the terms of the contract.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. Rules and regulation related to state contracts will be relegated to the Division of Purchasing or defined within the terms of the contract.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The impact of the repeal of this rule, if any, will be less regulation of the private sector. Rules and regulation related to state contracts will be relegated to the Division of Purchasing or defined within the terms of the contract.

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

CORRECTIONS  
ADMINISTRATION  
14717 S MINUTEMAN DR  
DRAPER, UT 84020-9549  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Michael Haddon by phone at 801-545-5913, by FAX at 801-545-5726, or by Internet E-mail at mhaddon@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011**

**THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2011**

**AUTHORIZED BY:** Thomas Patterson, Executive Director

### **R251. Corrections, Administration.**

#### ~~[R251-304. Contract Procedures.~~

#### ~~R251-304-1. Authority and Purpose.~~

~~(1) This rule is authorized by Section 64-13-25.~~

~~(2) The purpose of this rule is to establish minimum standards for the organization and operation of correctional contracting, to promote accountability, and to ensure a safe and professional operation of correctional programs.~~

**R251-304-2. Definitions:**

- ~~\_\_\_\_\_ (1) "Contract" means any state agreement for the procurement or disposal of supplies, services, or construction.~~
- ~~\_\_\_\_\_ (2) "Contractor" means any person or organization contracting with the Department to provide goods or services.~~
- ~~\_\_\_\_\_ (3) "Department" means the Utah State Department of Corrections (UDC).~~
- ~~\_\_\_\_\_ (4) "Executive Director" means the executive director of the Department of Corrections/designee.~~

**R251-304-3. Policy:**

- ~~\_\_\_\_\_ It is the policy of the Department that:~~
- ~~\_\_\_\_\_ (1) contractors shall provide all services due under a contract as an independent contractor;~~
- ~~\_\_\_\_\_ (2) contractors shall have no actual or implied authority to bind the State of Utah, any of its political subdivisions, or the Department of Corrections to any agreement, settlement, or understanding whatsoever;~~
- ~~\_\_\_\_\_ (3) no provision of a contract shall be construed to bring contractors or their officers, agents, employees, volunteers, or subcontractors (if any) within the coverage of the Utah Governmental Immunity Act, Title 63, Section 30;~~
- ~~\_\_\_\_\_ (4) all contractors' officers, employees, subcontractors, agents, or volunteers providing services shall be appropriately licensed and as may be necessary by the type of services provided, successfully complete a training session offered by UDC prior to contract implementation;~~
- ~~\_\_\_\_\_ (5) contractors shall allow authorized UDC personnel full access to contract-related records with or without notice during contractors' regular business hours;~~
- ~~\_\_\_\_\_ (6) contractors shall indemnify, hold harmless, and release the State of Utah and its officers, agents, and employees from and against all losses, damages, injuries, lawsuits and other proceedings arising out of the breach of, or performance under, the contract by contractors and their officers, agents, employees, subcontractors, and volunteers;~~
- ~~\_\_\_\_\_ (7) all contracts shall be monitored throughout the contract period and reviewed at least annually;~~
- ~~\_\_\_\_\_ (8) contracts may be terminated by the Department or the contractor with or without cause;~~
- ~~\_\_\_\_\_ (9) contractors shall comply with all state and local regulatory requirements, including the following:~~
  - ~~\_\_\_\_\_ (a) zoning ordinances;~~
  - ~~\_\_\_\_\_ (b) building codes;~~
  - ~~\_\_\_\_\_ (c) applicable health codes;~~
  - ~~\_\_\_\_\_ (d) life and safety codes;~~
  - ~~\_\_\_\_\_ (e) professional licenses;~~
  - ~~\_\_\_\_\_ (f) business licenses; or~~
  - ~~\_\_\_\_\_ (g) other applicable federal, state, and local laws;~~
- ~~\_\_\_\_\_ (10) UDC shall have the right to deny contractors, their agents, employees, and volunteers, or the agents, employees, and volunteers of their subcontractors, if any, access to premises controlled, held, leased, or occupied by UDC, if, in the sole judgment of UDC, such personnel pose a threat to UDC's legitimate security interests;~~
- ~~\_\_\_\_\_ (11) prior to signing the contract, contractors shall disclose to UDC the names and state job titles of any of their agents, officers, partners, volunteers, or employees who are also employees of the State of Utah;~~

- ~~\_\_\_\_\_ (12) UDC reserves the right to reject contractors' use of any person who, in the opinion of the Department, represents a threat to legitimate departmental interests;~~
- ~~\_\_\_\_\_ (13) at the time the contract is awarded, contractors shall provide UDC names and birth dates of employees for a criminal records check, and other information requested, including social security numbers of all contractors' officers, employees, agents, and volunteers who will be providing services under contracts; and, during the contract period, contractors shall provide the same information to UDC on their new officers, employees, agents, and volunteers;~~
- ~~\_\_\_\_\_ (14) contractors and UDC shall allow members of the general public to inspect Department contracts during regular business hours;~~
- ~~\_\_\_\_\_ (15) public inquiries to contractors regarding specific offenders shall be referred to UDC; and~~
- ~~\_\_\_\_\_ (16) decisions to terminate contracts may be appealed by contractors to the Executive Director of the Department of Corrections; the Director of Purchasing; or the District Court of the State of Utah.~~

**KEY: corrections, contracts**  
**Date of Enactment or Last Substantive Amendment: May 20, 2008**  
**Notice of Continuation: February 5, 2008**  
**Authorizing, and Implemented or Interpreted Law: 64-13-25]**

Corrections, Administration  
**R251-306**  
 Sponsors in Community Correctional  
 Centers

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 34860  
 FILED: 05/19/2011

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment updates statutory citations in the rule. It also clarifies that community correctional center offender sponsor applicants will be denied as a sponsor if false information is provided on the application.

SUMMARY OF THE RULE OR CHANGE: The amendment updates the statutory citation from Section 63-46a-3 to 63G-3-201 in the rule authorization references as required by H.B. 63 (2008). The amendment also updates Section R251-306-5 clarifying that offender sponsor applicants will be denied sponsorship of an offender if false information is provided in the application. (DAR NOTE: H.B. 63 (2008) is found at

Chapter 382, Laws of Utah 2008, and was effective 05/05/2008.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-3-201 and Section 64-13-10 and Section 64-13-17

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There are no costs or savings to the state budget. The amendment simply updates statutory citations and clarifies existing language.
- ◆ **LOCAL GOVERNMENTS:** There are no costs or savings to local governments. The amendment simply updates statutory citations and clarifies existing language.
- ◆ **SMALL BUSINESSES:** There are no costs or savings to small businesses. The amendment simply updates statutory citations and clarifies existing language.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or savings to other persons. The amendment simply updates statutory citations and clarifies existing language.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. The amendment simply updates statutory citations and clarifies existing language.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The substantive change proposed in this amendment is the denial of offender sponsorship for applicants who provide false information on a sponsorship application. This will have no fiscal impact on businesses.

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

CORRECTIONS  
ADMINISTRATION  
14717 S MINUTEMAN DR  
DRAPER, UT 84020-9549  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Michael Haddon by phone at 801-545-5913, by FAX at 801-545-5726, or by Internet E-mail at mhaddon@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2011

AUTHORIZED BY: Thomas Patterson, Executive Director

**R251. Corrections, Administration.**

**R251-306. Sponsors in Community Correctional Centers.**

**R251-306-1. Authority and Purpose.**

(1) This rule is authorized by Sections [~~63-46a-3~~]63G-3-201, 64-13-10, and 64-13-17, of the Utah Code.

(2) The purpose of this rule is to provide the Department's policy for sponsors accompanying offenders of Community Correctional Centers into the community and to explain the process of applying to be a sponsor.

**R251-306-5. Application Procedure.**

(1) Persons wishing to sponsor residents shall complete an Application to Sponsor form;

(2) Application to Sponsor forms can be obtained from the Correctional Center at which the resident is housed;

(3) a divorced applicant requesting to sponsor an offender of the opposite sex shall provide a copy of final divorce decree; exceptions are the offender's immediate family members;

(4) a records and current warrants check shall be made on each applicant;

(5) applicants shall make a separate application for each offender they request to sponsor;

(6) a sponsor shall not be permitted to sign out and accompany more than one offender at a time except as approved by the Center Director/designee;

(7) applicants shall be required to sign the sponsor application certifying that they have been advised of the rules pertaining to sponsorship of offenders and shall agree to abide by them; the offender shall be returned to the Center on or before the date and time indicated on the Application for Leave form;

(8) applications with inaccurate, incomplete or illegibly written information shall be subject to delay until additional information or clarification is obtained;

(9) applicants providing false information shall[~~may~~] be denied as sponsors;

(10) Center staff members may approve, restrict or deny applicant and sponsor privileges due to safety, security, control and orderly operation of the Center, program requirements or the best interests of the Department; and

(11) each sponsor shall sign an Application for Leave form before leaving the Center.

**KEY:** community-based corrections, halfway houses, sponsors[\*], corrections

**Date of Enactment or Last Substantive Amendment:** [~~1994~~]2011

**Notice of Continuation:** January 31, 2007

**Authorizing, and Implemented or Interpreted Law:** [~~63-46a-3~~]63G-3-201; 64-13-10; 64-13-17

Corrections, Administration  
**R251-707**  
Legal Access

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34863

FILED: 05/23/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This amendment updates statutory citations, updates prison facility listing, and clarifies the legal standard required for a strip search.

**SUMMARY OF THE RULE OR CHANGE:** This change updates Section 63-46a-3 to 63G-3-201 in the rule authorization references per H.B. 63 (2008). The Promontory facility is added to the list of housing units provided in the definition of "Draper Site", and specific reference to the "Iron County Correctional Facility" is eliminated, as the department no longer has a unique association with this facility. Finally, clarity is provided that the legal standard for a strip search of attorneys/representatives will be reasonable suspicion. Previously, this was unclear as both probable cause and reasonable suspicion were noted as legal standards. (DAR NOTE: H.B. 63 (2008) is found at Chapter 382, Laws of Utah 2008, and was effective 05/05/2008.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63G-3-201 and Section 64-13-10 and Section 64-13-17 and Section 64-13-7

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There are no costs or savings to the state budget. The amendment simply updates statutory citations, updates the prison facility listing, and clarifies existing language.

◆ **LOCAL GOVERNMENTS:** There are no costs or savings to local governments. The amendment simply updates statutory citations, updates the prison facility listing, and clarifies existing language.

◆ **SMALL BUSINESSES:** There are no costs or savings to small businesses. The amendment simply updates statutory citations, updates the prison facility listing, and clarifies existing language.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or savings to other persons. The amendment simply updates statutory citations, updates the prison facility listing, and clarifies existing language.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. The amendment simply updates statutory citations, updates the prison facility listing, and clarifies existing language.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The primary changes are updates to statutory citations and correctional facilities. The amendment specifies reasonable suspicion is required before an attorney or representative may be strip searched. This is the appropriate legal standard.

As the rule is currently drafted, there is a lack of clarity, as both probable cause and reasonable suspicion are listed as the legal standard.

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

CORRECTIONS  
ADMINISTRATION  
14717 S MINUTEMAN DR  
DRAPER, UT 84020-9549

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Michael Haddon by phone at 801-545-5913, by FAX at 801-545-5726, or by Internet E-mail at mhaddon@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2011

AUTHORIZED BY: Thomas Patterson, Executive Director

**R251. Corrections, Administration.****R251-707. Legal Access.****R251-707-1. Authority and Purpose.**

(1) This rule is authorized by Sections [~~63-46a-3~~63G-3-201, 64-13-7, 64-13-10 and 64-13-17, of the Utah Code, which allow the Department to adopt procedures in accordance with its responsibilities.

(2) The purpose of this rule is to provide the policy and procedures for inmates under the control of the Institutional Operations Division regarding access to courts and counsel.

**R251-707-2. Definitions.**

(1) "Attorney" means a member of the legal profession who has been licensed by a state and who has a current and valid license or bar card allowing him to practice law; lawyer; counsel; esquire;

(2) "Attorney Representatives" means paralegals, law clerks, investigators and other attorneys who are acting under the authority and supervision of the attorney of record;

(3) "CUCF" means Central Utah Correctional Facility located in Gunnison;

(4) "DIO" means Division of Institutional Operations;

(5) "Draper Site" means collectively, Timpanogos, Lone Peak, Promontory, Olympus, Oquirrh, Wasatch, Uinta, and SSD facilities;

(6) "Out-Count Status" means any inmate under legal supervision or confinement of the Utah Department of Corrections who is housed at any location other than the Draper or Gunnison sites;

(7) "Prison" means the Utah State Prison in Draper and CUCF in Gunnison;

(8) "Probable Cause" means sufficient knowledge of articulable facts or circumstances to lead a reasonable person to conclude that another person has committed, is committing, or is

about to commit a crime or a violation of a legally enforceable policy or rule;

(9) "Service of Process" means the service of writs, summonses, warrants and subpoenas to inmate or UDC members; and

(10) "UDC" means the Utah Department of Corrections.

**R251-707-3. Policy.**

It is the policy of the Department that:

(1) legal assistance shall be provided to assist inmates in preparing and filing of an initial pleading in habeas corpus and civil rights suits challenging conditions of confinement arising from incarceration at the prison;

(2) inmates incarcerated at UDC facilities shall be allowed reasonable access to courts and counsel regarding any type of legal matter;

(3) access to courts and counsel shall be extended to those inmates in out-count status;

(4) the primary means of access to legal services shall be provided by contract attorneys paid by the Department, though inmates may secure legal counsel at their own expense if they prefer not to use the contracted legal firm or they may choose to represent themselves;

(5) inmate writ writers may represent themselves but may not represent other inmates;

(6) a law library shall not be provided, except that law books may be included among the books in the general inmate library system;

(7) before being admitted to the prison, attorneys shall present a current state bar card and photo I.D.;

(8) before being admitted to the prison, attorney representatives shall present a letter of introduction from the attorney of record and a photo I.D.;

(9) attorneys and their representatives shall not interfere with the safety, security or orderly operation of the prison;

(10) attorneys and their representatives shall be cleared through the Bureau of Criminal Identification prior to being approved for visitation; individuals with a criminal record shall be allowed to visit only with the approval of the Director of Institutional Operations/designee;

(11) attorneys may elect to have an attorney representative visit an inmate client instead of visiting personally;

(12) attorney representatives:

(a) have no standing on their own; their standing to visit is granted only in their role as representatives of the attorney of record;

(b) may be cleared for visits, if the attorneys they represent:

(i) submit a request, in writing, to the warden of the facility where the inmate is housed;

(ii) provide the name and title of the person assigned to represent the attorney; and

(iii) provide the name of the inmate to be visited;

(c) who have been cleared shall be afforded the same basic rights and privileges as those extended to the attorney of record;

(13) attorneys/representatives should not be denied visits, nor face inordinate delays when visits are prescheduled within the hours designated by the institution;

(14) in the event of exigent circumstances requiring an attorney/representative visit before appropriate screening can be completed, temporary approval for a visit may be approved by the Director of Institutional Operations/designee;

(15) inmate attorney/representative telephone calls shall originate from inside the institution and should not exceed thirty minutes in duration;

(16) attorneys/representatives may leave telephone messages requesting return calls;

(17) visits between inmates and counsel shall not be monitored and shall occur in facilities which permit privacy; however, privacy requirements shall not prohibit visual observation;

(18) attorneys/representatives should schedule on-site visits in advance, when possible;

(19) attorneys/representatives may schedule appointments with their inmate clients:

(a) at Draper Site and CUCF, Monday through Friday, 0800 to 1100 hours and 1300 to 1500 hours;

(b) on weekends, holidays, and evenings with prior written clearance from the Director/designee of Institutional Operations;

(c) at [~~Iron County Correctional Facility and~~] county jails as requested;

(d) in out-of-state institutions, consistent with receiving agencies' policies and procedures; and

(e) during non-visiting hours without prior approval in exigent circumstances if authorized by DIO Director/designee;

(20) attorneys/representatives shall:

(a) follow Department and prison rules during visits to the institution;

(b) conduct themselves in a manner consistent with safety and security requirements; and

(c) comply with instructions of staff members while in the institution;

(21) physical inspections shall be made of all material brought into and out of any facility by any attorney/representative and shall be performed only in the presence of the attorney/representative;

(22) if any written material is declared privileged, it shall not be read; however, the attorney/representative may be required to leaf through these materials in the presence of staff, to assist in inspecting for contraband;

(23) if a reasonable suspicion exists to believe an attorney/representative possesses contraband, a rub search may be required before permitting the visit and an incident report shall be filed documenting the reasonable suspicion and incident;

(24) refusal to submit to search may result in the visit being denied and the attorney/representative being asked to leave the premises;

(25) strip searches of attorneys/representatives shall be conducted only if there is [~~probable cause or~~] reasonable suspicion of a particularized nature; an incident report shall be filed documenting the [~~probable cause~~] reasonable suspicion, incident and reason a strip search was necessary under the circumstances;

(26) if a warden/designee determines that a safety, security, control or management problem could result by allowing an attorney/representative access to a facility, the warden/designee may place reasonable restrictions upon access or deny access when

necessary; an incident report shall be filed articulating the justification for denying access and documenting the incident;

(27) an attorney/representative may request a hearing before the Executive Director if he believes the denial of access for him or his legal representative was arbitrary, capricious, unreasonable or in violation of law or Department policy;

(28) any attorney/representative who violates any Department policy or rule or who provides false information may be denied access to the facility; and

(29) staff members authorized to accept service of process shall ensure that the requirements of proper service are appropriately satisfied at the DIO.

**KEY: corrections, prisons, legal aid**

**Date of Enactment or Last Substantive Amendment:** ~~January 15, 1998~~ **2011**

**Notice of Continuation:** January 31, 2007

**Authorizing, and Implemented or Interpreted Law:** 63-46a-3; 64-13-7; 64-13-10; 64-13-17

**Governor, Economic Development,  
Pete Suazo Utah Athletic Commission  
R359-1-501**

**Promoter's Responsibilities in  
Arranging a Contest**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34901

FILED: 06/01/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Requires contestants who are injured during an unarmed combat event to seek medical services with 72 hours of their bout and maintain copies of the medical treatment, expenses, and correspondence with the insurance provider and promoter to ensure coverage. Removes requirement for the ringside physician to be paid through the commission. This eliminates an unnecessary burden on staff.

**SUMMARY OF THE RULE OR CHANGE:** Removes requirement for the ringside physician to be paid through the commission. Requires contestants who are injured during an unarmed combat event to seek medical services with 72 hours of their bout and maintain copies of the medical treatment, expenses, and correspondence with the insurance provider and promoter to ensure coverage.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 63C, Chapter 11

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This requirement will not negatively impact the commission's workload in regulating events and licensing participants. The commission will enforce the proposed changes within its present budget and staff.

◆ **LOCAL GOVERNMENTS:** The proposed change will not result in any anticipated cost or savings to local government since local governments do not regulate unarmed combat events or participants.

◆ **SMALL BUSINESSES:** Promoters are already required to provide medical insurance coverage for contestants. This will not increase the cost of providing medical insurance. However, it may reduce the cost of reimbursement for unsubstantiated claims for injuries not sustained during the unarmed combat event.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Contestants will have to keep copies of their correspondence with the promoter and insurance provider if they are seeking medical reimbursement for injuries sustained during an unarmed combat event. They should be doing this anyway to facilitate reimbursement for any valid expenses. Contestants will continue to be reimbursed for medical treatment for injuries sustained during an unarmed combat event.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Contestants will have to keep copies of their correspondence with the promoter and insurance provider if they are seeking medical reimbursement for injuries sustained during an unarmed combat event. They should be doing this anyway to facilitate reimbursement for any valid expenses. Contestants will continue to be reimbursed for medical treatment for injuries sustained during an unarmed combat event.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is increasing concern that some contestants who have been injured during an unarmed combat event are not promptly seeking medical attention and are not filing timely claims and are keeping records of their correspondence documenting this coverage. There is also concern with the potential for late claims being submitted for injuries not sustained during the unarmed combat event. This rule should help mitigate the risks and costs of false claims to promoters and medical insurance providers.

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

GOVERNOR  
ECONOMIC DEVELOPMENT,  
PETE SUAZO UTAH ATHLETIC COMMISSION  
324 S STATE ST  
STE 500  
SALT LAKE CITY, UT 84111  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Bill Colbert by phone at 801-538-8876, by FAX at 801-538-8888, or by Internet E-mail at [bcolbert@utah.gov](mailto:bcolbert@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Bill Colbert, Director

**R359. Governor, Economic Development, Pete Suazo Utah Athletic Commission.**

**R359-1. Pete Suazo Utah Athletic Commission Act Rule.**

**R359-1-501. Promoter's Responsibilities in Arranging a Contest.**

(1) Before a licensed promoter may hold a contest or single contest as part of a single promotion, the promoter shall file with the Commission an application for a permit to hold the contest not less than 15 days before the date of the proposed contest, or not less than seven days for televised contests.

(2) The application shall include the date, time, and place of the contest as well as information concerning the on-site emergency facilities, personnel, and transportation.

(3) The permit application must be accompanied by a contest registration fee determined by the Department under Section 63-38-32.

(4) Before a permit to hold a contest is granted, the promoter shall post a surety bond with the Commission in the amount of \$10,000, or total sum of the contestant purses, officials fees and estimated commission fees, whichever is greater. Promoters who have held less than 5 unarmed combat events in the state of Utah shall deposit an additional \$10,000 minimum Cashier's Check or Bank Draft with the commission no later than 7 days prior to the event or the event may be cancelled by the commission.

(5) Prior to the scheduled time of the contest, the promoter shall have available for inspection the completed physical facilities which will be used directly or indirectly for the contest. The designated Commission member shall inspect the facilities in the presence of the promoter or the promoter's authorized representative, and all deficiencies cited upon inspection shall be corrected before the contest.

(6) A promoter shall be responsible for verifying the identity, ring record, and suspensions of each contestant. A promoter shall be held responsible for the accuracy of the names and records of each of the participating contestants in all publicity or promotional material.

(7) A promoter shall be held responsible for a contest in which one of the contestants is disproportionately outclassed.

(8) Before a contest begins, the promoter shall give the designated Commission member the funds necessary for payment of contestants, referees, judges, timekeeper and the attending physician(s). The designated Commission member shall pay each contestant, referee, and judge in the presence of one witness. [~~Payment for the attending physician(s) shall be made by the commission by the State of Utah.~~]

(9) A promoter shall be not under the influence of alcohol or controlled substances during the contest and until all purses to the contestants and all applicable fees are paid to the commission, officials and ringside physician.

(10) The promoter shall be responsible for payment of any commission fee(s) deducted from a contestant's purse, if the fees are not collected directly from the contestant at the conclusion of the bout or if the contestant fails to compete in the event.

(11) At the time of an unarmed combat contest weigh-in, the promoter of a contest shall provide primary insurance coverage for each uninsured contestant and secondary insurance for each insured contestant in the amount of \$10,000 for each licensed contestant to provide medical, surgical and hospital care for licensed contestants who are injured while engaged in a contest or exhibition:

(a) The term of the insurance coverage must not require the contestant to pay a deductible, for the medical, surgical or hospital care for injuries he sustains while engaged in a contest of exhibition.

(b) If a licensed contestant pays for the medical, surgical or hospital care, the insurance proceeds must be paid to the contestant or his beneficiaries as reimbursement for the payment.

(c) The promoter shall also provide life insurance coverage of \$10,000 for each contestant in case of death.

(d) The required medical insurance and life insurance coverage can not be waived by the contestant or any other party.

(e) A contestant seeking medical insurance reimbursement for injuries sustained during an unarmed combat event shall obtain medical treatment for their injuries within 72 hours of their bout and maintain written records of their treatment, expenses and correspondence with the insurance provider and promoter to ensure coverage.

(12) In addition to the payment of any other fees and money due under this part, the promoter shall pay the following event fees:

(a)(i) \$200 for a contest or event occurring in a venue of fewer than 500 attendees;

(ii) \$300 for a contest or event occurring in a venue of at least 500 attendees but fewer than 1,000 attendees;

(iii) \$400 for a contest or event occurring in a venue of at least 1,000 attendees but fewer than 3,000 attendees;

(iv) \$600 for a contest or event occurring in a venue of at least 3,000 attendees but fewer than 5,000 attendees;

(v) \$1000 for a contest or event occurring in a venue of at least 5,000 attendees but fewer than 10,000 attendees; or

(vi) \$2000 for a contest or event occurring in a venue of at least 10,000 attendees; and

(b) 3% of the first \$500,000, and one percent of the next \$1,000,000, of the total gross receipts from the sale, lease, or other exploitation of internet, broadcasting, television, and motion picture rights for any contest or exhibition thereof, without any deductions for commissions, brokerage fees, distribution fees, advertising, contestants' purses or any other expenses or charges, except in no case shall the fee be more than \$25,000. The promoter shall notify and provide the commission with certified copies of any contracts, agreements or transfers of any internet, broadcasting, television, and motion picture rights for any contest or exhibition within seven days of any such agreements. The commission may require a surety deposit be provided to the commission to ensure these requirements are met.

(c) the applicable fees assessed by the Association of Boxing Commission designated official record keeper.

(d) the commission may exempt from the payment of all or part of the assessed fees under this section for a special contest or exhibition based on factors which include:

- (i) a showcase event promoting a greater interest in contests in the state;
- (ii) attraction of the optimum number of spectators;
- (iii) costs of promoting and producing the contest or exhibition;
- (iv) ticket pricing;
- (v) committed promotions and advertising of the contest or exhibition;
- (vi) rankings and quality of the contestants; and
- (vii) committed television and other media coverage of the contest or exhibition.
- (viii) contribution to a 501(c)(3) charitable organization.

**KEY: boxing, licensing, unarmed combat, white-collar contests**  
**Date of Enactment or Last Substantive Amendment: [April 26, 2011]**  
**Notice of Continuation: May 10, 2007**  
**Authorizing, and Implemented or Interpreted Law: 63C-11-101 et seq.**

**Governor, Economic Development,  
 Pete Suazo Utah Athletic Commission  
 R359-1-515  
 Competing in an Unsanctioned  
 Unarmed Combat Event**

**NOTICE OF PROPOSED RULE  
 (Amendment)**

DAR FILE NO.: 34900  
 FILED: 06/01/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Administratively suspends prospective and current contestants who compete in unarmed combat events not sanctioned by an Association of Boxing Commissions (ABC) member commission for 60 days and requires them to resubmit their blood work.

**SUMMARY OF THE RULE OR CHANGE:** This change clarifies language in Subsection R359-1-515(2) that was confusing.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 63C, Chapter 11

**ANTICIPATED COST OR SAVINGS TO:**  
 ♦ **THE STATE BUDGET:** This requirement will not negatively impact the commission's ability to regulate unarmed combat

events and licensees. The proposed change can be accommodated within the commission's present budget and FTEs.

♦ **LOCAL GOVERNMENTS:** The proposed rule change will not result in any anticipated cost or savings to local government since local government does not regulate unarmed combat events.

♦ **SMALL BUSINESSES:** The proposed rule will not increase the cost or result in any net savings to small businesses. No additional fees or requirements are being assessed to these entities.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** A contestant who competes in an unsanctioned unarmed combat event will have to have their blood work done again and resubmitted to the commission before competing in an unarmed combat in Utah. The estimated cost for these blood tests is less than \$100 per individual.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** A contestant who competes in an unsanctioned unarmed combat event will have to have their blood work done again and resubmitted to the commission before competing in an unarmed combat in Utah. The estimated cost for these blood tests is less than \$100 per individual.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Unarmed combat contestants who compete in unsanctioned events do not have the oversight of a commission that is a member of the Association of Boxing Commissions (ABC). It is difficult to assess whether or not a contestant was seriously injured or exposed to a blood-borne disease during an unsanctioned event. The proposed rule helps protect the health and safety of unarmed combat contestants and discourages them from participating in unsanctioned events. Since unsanctioned events are prohibited in Utah, this rule will not have a fiscal impact on businesses.

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

GOVERNOR  
 ECONOMIC DEVELOPMENT,  
 PETE SUAZO UTAH ATHLETIC COMMISSION  
 324 S STATE ST  
 STE 500  
 SALT LAKE CITY, UT 84111  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ♦ Bill Colbert by phone at 801-538-8876, by FAX at 801-538-8888, or by Internet E-mail at bcolbert@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011**

**THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011**

AUTHORIZED BY: Bill Colbert, Director

**R359. Governor, Economic Development, Pete Suazo Utah Athletic Commission.**

**R359-1. Pete Suazo Utah Athletic Commission Act Rule.**

**R359-1-515. Competing in an Unsanctioned Unarmed Combat Event.**

(1) The Commission shall deny issuing a license to a contestant who has competed in an unarmed combat event not sanctioned by an Association of Boxing Commission (ABC) member commission for a period of 60 days from the date of the event.

(2) Unarmed combat contestants who are currently licensed by the Commission shall not be approved to compete in an unarmed combat event until 60 days from the date of their last competition in an unarmed combat event not sanctioned by an ABC member commission~~[sanctioned fight]~~.

(3) After competing in an unsanctioned unarmed combat event, a contestant must submit new blood tests results drawn within 30 days of their scheduled event.

**KEY: unarmed combat, licensing, boxing, white-collar contests**  
**Date of Enactment or Last Substantive Amendment: [April 26, 2011]**

**Notice of Continuation: May 10, 2007**

**Authorizing, and Implemented or Interpreted Law: 63C-11-101 et seq.**

Health, Health Care Financing,  
 Coverage and Reimbursement Policy  
**R414-3A-6**  
 Services

**NOTICE OF PROPOSED RULE**  
 (Amendment)

DAR FILE NO.: 34893  
 FILED: 06/01/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to update the rule in conjunction with reimbursement updates for outpatient hospital services, which will be changing to Medicare's Outpatient Prospective Payment System (OPPS) methodology.

**SUMMARY OF THE RULE OR CHANGE:** This amendment updates the rule in conjunction with reimbursement updates for outpatient hospital services, which will be changing to Medicare's OPPS methodology.

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

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The change to Medicare's OPPS reimbursement methodology is not anticipated to impact the state budget as Medicare's payment is the upper limit Utah could pay for these services.

◆ **LOCAL GOVERNMENTS:** It is not possible to determine the exact impact of this change on local governments as the outpatient hospital services provided can vary widely from year to year. Reimbursement using Medicare's methodology will ensure that providers are receiving the maximum allowed under 42 CFR 447.321, which governs upper payment limits for outpatient hospital services.

◆ **SMALL BUSINESSES:** It is not possible to determine the exact impact of this change on small businesses as the outpatient hospital services provided can vary widely from year to year. Reimbursement using Medicare's methodology will ensure that providers are receiving the maximum allowed under 42 CFR 447.321, which governs upper payment limits for outpatient hospital services.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is not possible to determine the exact impact of this change as the outpatient hospital services provided can vary widely from year to year. Reimbursement using Medicare's methodology will ensure that providers are receiving the maximum allowed under 42 CFR 447.321, which governs upper payment limits for outpatient hospital services.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Compliance costs may be slightly reduced as affected persons will be able to bill Medicaid similar to how they currently bill Medicare.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Medicaid's billing system for outpatient hospital services will now be more similar to Medicare and should reduce the administrative burden on providers and have a positive fiscal impact.

**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](mailto:cdevashrayee@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

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

**R414-3A. Outpatient Hospital Services.**

**R414-3A-6. Services.**

(1) Services appropriate in the outpatient hospital setting for adequate diagnosis and treatment of a client's illness are limited to less than 24 hours and encompass medically necessary diagnostic, therapeutic, rehabilitative, or palliative medical services and supplies ordered by a physician or other practitioner of the healing arts.

(2) Outpatient hospital services include:

(a) the service of nurses or other personnel necessary to complete the service and provide patient care during the provision of service;

(b) the use of hospital facilities, equipment, and supplies; and

(c) the technical portion of clinical laboratory and radiology services.

(3) Laboratory services are limited to tests identified by the Centers for Medicare and Medicaid Services (CMS) where the individual laboratory is CLIA certified to provide, bill and receive Medicaid payment.

(4) Cosmetic, reconstructive, or plastic surgery is limited to:

(a) correction of a congenital anomaly;

(b) restoration of body form following an injury; or

(c) revision of severe disfiguring and extensive scars resulting from neoplastic surgery.

(5) Abortion procedures are limited to procedures certified as medically necessary, cleared by review of the medical record, approved by division consultants, and determined to meet the requirements of Section 26-18-4 and 42 CFR 441.203.

(6) Sterilization procedures are limited to those that meet the requirements of 42 CFR 441, Subpart F.

(7) Nonphysician psychosocial counseling services are limited to evaluations and may be provided only through a prepaid mental health plan by a licensed clinical psychologist for:

(a) mentally retarded persons;

(b) cases identified through a CHEC/EPSDT screening;

or

(c) victims of sexual abuse.

(8) Outpatient individualized observation of a mental health patient to prevent the patient from harming himself or others is not covered.

(9) Sleep studies are available only in a sleep disorder center accredited by the American Academy of Sleep Medicine.

(10) Hyperbaric Oxygen Therapy is limited to service in a facility in which the hyperbaric unit is accredited by the Undersea and Hyperbaric Medical Society.

~~[(11) Lithotripsy is covered by an all-inclusive fixed fee. This payment covers all hospital and ambulatory surgery-related services for lithotripsy on the same kidney for 90 days, including repeat treatments. Lithotripsy for treatment of the other kidney is a separate service.]~~

~~[(12) Reimbursement for services in the emergency department is limited to codes and diagnoses that are medically necessary emergency services as described in the provider manual.]~~

~~[(13)11] Take home supplies and durable medical equipment are not reimbursable.~~

~~[(14)12] Prescriptions are not a covered Medicaid service for a client with the designation "Emergency Services Only Program" printed on the Medicaid Identification Card.~~

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment: [January 4,] 2011**

**Notice of Continuation: November 8, 2007**

**Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-2.3; 26-18-3(2); 26-18-4**

**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-4A  
Outpatient Hospital Services: Payment  
of Triage Fee**

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 34894

FILED: 06/01/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule states authority and purpose, outlines triage policies, and defines terms in the rule text. It also specifies service coverage, standards of care, prior authorization requirements, and reimbursement for services. The Department needs to repeal this rule based on internal review that shows that the Department no longer uses the policies spelled out in the text.

**SUMMARY OF THE RULE OR CHANGE:** This rule is repealed in its entirety.

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

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There is no impact to the state budget because the Department no longer uses the policies set forth in this rule.

- ◆ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund or provide outpatient hospital services under the Medicaid program.
- ◆ SMALL BUSINESSES: There is no impact to small businesses because the Department no longer uses the policies set forth in this rule.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid clients and to Medicaid providers because the Department no longer uses the policies set forth in this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid client or to a Medicaid provider because the Department no longer uses the policies set forth in this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule specifies an obsolete practice. Repeal should have no fiscal impact.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

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

##### **~~R414-4A. Outpatient Hospital Services: Payment of Triage Fee.~~**

##### **R414-4A-1. Policy Statement.**

~~(1) Primary medical care is best delivered by a primary care physician who, through the physician-patient therapeutic relationship, can deliver or arrange the appropriate mix of medical and other services that the patient needs. Primary care physicians are skilled at early detection of disease and delivering prompt treatment, and in promoting health and preventing illnesses.~~

~~(2) Hospital emergency rooms are not the appropriate place for patients to receive primary or routine medical care.~~

##### **~~R414-4A-2. Authority and Purpose.~~**

~~(1) The Utah Department of Health is the Single State Agency. The Division of Health Care Financing has the authority to define the scope of outpatient hospital services to be delivered under the Utah State Plan for Medicaid.~~

~~(2) The purpose of paying a triage fee is to reimburse the hospitals for the emergency room physician's service of assessing the medical status of a patient. If a patient's medical needs are determined by the emergency room physicians to be routine, that is, not of an emergency or urgent nature, the patient will be referred to his primary care physician for the treatment of his routine care needs and will not be treated in the emergency room.~~

~~(3) It is cost-effective for clients to seek primary and routine medical care through their primary medical provider rather than seeking these services through hospital emergency rooms.~~

##### **~~R414-4A-3. Definitions.~~**

~~(1) "Emergency" means a condition for which a delay in treatment may result in death or permanent impairment of health.~~

~~(2) "Primary care physician" means a practitioner whose practice is the field of general practice, family practice, pediatrics, internal medicine, obstetrics/gynecology, osteopathy, or nurse midwifery.~~

~~(3) "Primary medical care" means services to diagnose and treat illness and injury as well as preventive health care services. Primary and preventive health care services promote early identification and treatment of health problems, which can help to reduce unnecessary complications of illness or injury and maintain or improve overall health status.~~

~~(4) "Triage" means the sorting and classification of patients, to determine priority of need for treatment and proper place of treatment.~~

~~(5) "Urgent" means a condition not likely to cause death or lasting harm, but for which treatment should not wait for a normally scheduled appointment (e.g., suturing minor cuts, setting simple broken bones, and treating conditions characterized by abnormally high temperatures).~~

##### **~~R414-4A-4. Service Coverage.~~**

~~(1) Triage service includes services such as: assessment and diagnosis of a patient's condition and determination of a proper place for treatment.~~

~~(2) Triage service may only be performed by a licensed physician.~~

##### **~~R414-4A-5. Standards of Care.~~**

~~It is a decision of the emergency room physician whether medical care is classified as routine, urgent, or is an emergency.~~

##### **~~R414-4A-6. Prior Authorization.~~**

~~None required.~~

##### **~~R414-4A-7. Reimbursement for Services.~~**

~~(1) Payment for triage services is made on a revenue code basis.~~

~~(2) When a triage service is billed, no other medical care services will be paid by Medicaid for that date of service, to the same provider for the same triage encounter.~~

~~(3) Rates are based on an encounter unit of service.~~

~~(4) The Division of Health Care Financing will not pay a claim for triage services for which another payer is liable, nor for services for which no payment liability is incurred.~~

~~KEY: medicaid~~

~~Date of Enactment or Last Substantive Amendment: 1993~~

~~Notice of Continuation: January 26, 2007~~

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

Health, Family Health and  
Preparedness, Emergency Medical  
Services  
**R426-16**  
Emergency Medical Services  
Ambulance Rates and Charges

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34902

FILED: 06/01/2011

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Although this rule has not been amended since 2006, the Department by order has authorized agencies to adjust rates according to the agency's fiscal data as reviewed by the Department. For the past four years, the Department has issued these orders on July 1 with the exception of one issued on January 1, 2009. Currently, the published ambulance rates in the rule are not the current rates which ambulance agencies charge. Rule R426-16 is revised to reflect the 07/01/2011 revised ambulance rates. Ambulance rates in the future will no longer be issued by an Order by the Department per meetings with the Administrative Rules Review Committee. Ambulance rates will be changed through the rulemaking process.

SUMMARY OF THE RULE OR CHANGE: The rule amendment will end confusion as the published ambulance rates do not match the current Ambulance Rates in Rule R426-16. Rates were adjusted annually based on factors set forth in the rule, but the new rates were not published as a rule. In the future, all rate changes will be placed in rule. Ambulance agencies no longer charge for Treat and Release, Emergency Response, and Night surcharges. Rule R426-16 needs to be amended to reflect these changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-8a-403

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The state budget will not be impacted as this is a user fee.

◆ LOCAL GOVERNMENTS: Local government budgets will not be impacted significantly. The rates listed in the rule are increased significantly. However, the EMS agency billings increase by 6.36% from current rates to offset declining collections, wages increases, and the increased fuel and equipment costs.

◆ SMALL BUSINESSES: The rates listed in the rule are increased significantly. However, Emergency Medical Service agencies budgets will not be impacted. The ambulance transport rate increase is 6.36% from current ambulance rates to offset declining collections, wage increases, and the increased fuel and equipment costs.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The rates listed in the rule are increased significantly. However, Emergency Medical Service budgets will not be impacted. The ambulance transport rate increase is 6.36% from current ambulance rates to offset declining collections, wage increases, and the increased fuel and equipment costs. This is a user fee, only patients transported by ambulance are affected.

COMPLIANCE COSTS FOR AFFECTED PERSONS: EMS agencies are allowed to bill the rates listed in the proposed rule and there are no costs to the agency for compliance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Ambulance rates are set by this rule. The increase of 6.36% is justified by current costs documented by providers. The large change in the rates in the rule reflect a policy of changing rates without updating the rule. This policy has been stopped. Impact of the rule will be positive for regulated business.

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

HEALTH  
FAMILY HEALTH AND PREPAREDNESS,  
EMERGENCY MEDICAL SERVICES  
3760 S HIGHLAND DR  
SALT LAKE CITY, UT 84106  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Allan Liu by phone at 801-273-6664, by FAX at 801-273-4165, or by Internet E-mail at [aliu@utah.gov](mailto:aliu@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

**R426. Health, Family Health and Preparedness, Emergency Medical Services.****R426-16. Emergency Medical Services Ambulance Rates and Charges.****R426-16-1. Authority and Purpose.**

(1) This rule is established under Title 26, Chapter 8a.  
 (2) The purpose of this rule is to provide for the establishment of maximum ambulance transportation and rates to be charged by licensed ambulance services in the State of Utah.

**R426-16-2. Ambulance Transportation Rates and Charges.**

(1) Licensed services operating under R426-15 shall not charge more than the rates described in this rule. In addition, the net income of licensed services, including subsidies of any type, shall not exceed the net income limit set by this rule.

(a) The net income limit shall be the greater of eight percent of gross revenue or 14 percent return on average assets.

(b) Licensed Services may change rates at their discretion after notifying the Department, provided that the rates do not exceed the maximums specified in this rule.

(c) An agency may not charge a transportation fee for patients who are not transported.

(2) The initial regulated rates established in this rule shall be adjusted annually on July 1, based on ~~[an annual review of the most recent 12 month percentage change in price levels from the following sources: U.S. Bureau of Labor Statistics Occupational Employment and Wage Data, the National Consumer Pricing Index (CPI), the State of Utah Governor's Office of Planning and Budget economic report, the U.S. Bureau of Labor Statistics seasonally adjusted CPI for Urban Consumers transportation and medical care categories, and the U.S. Bureau of Labor Statistics seasonally adjusted CPI for Urban Wage Earners and Clerical Workers transportation and medical categories. The adjustment shall be made effective and published by order of the Department prior to June 1 of each year and become effective July 1, of each year. All licensed services will collect]~~ financial data as delineated by the department to be submitted as detailed under R426-~~[8]16-2([10]9)~~. This data shall then be used as the basis for the annual rate adjustment.

(3) Base Rates for ground transport to care facility -

(a) ~~[Basic]~~ Ground Ambulance - \$[400.40]569.00 per transport.

(b) Intermediate Ground Ambulance - \$[475.40]752.00 per transport.

(c) Paramedic Ground Ambulance - \$[600.50]1,100.00 per transport.

(d)~~(i) A basic ambulance licensee may charge a base rate of \$720.65 per transport and an intermediate ambulance licensee may charge a base rate of \$795.70 per transport if:~~ Ground Ambulance with Paramedic on-board - \$1,100.00 per transport if:

~~[(A)](i)~~ a dispatch agency dispatches a paramedic licensee to treat the individual;

~~[(B)](ii)~~ the paramedic licensee has initiated advanced life support~~[-];~~

~~[(C)](iii)~~ on-line medical control directs that a paramedic remain with the patient during transport; and

~~[(D)](iv)~~ ~~[the ambulance provider pays \$210.95 to the paramedic licensee.~~

~~————(ii) A]~~an ambulance service that interfaces with a paramedic rescue service ~~[must have]~~and has an interlocal or equivalent agreement in place, dealing with reimbursing the paramedic agency for services provided up to ~~[the]~~a maximum of ~~[\$210.95]234.71~~ per transport.

(4) Mileage Rate[s]-

(a) ~~\$31.[40]65~~ per mile or fraction thereof.

(b) In all cases mileage shall be computed from the point of pickup to the point of delivery.

(c) A fuel fluctuation surcharge of \$0.25 per mile may be added when diesel fuel prices ~~[are more than \$3.] exceed \$5.10~~ per gallon ~~[above the price of record, as established by the Department, on the immediately prior July 1 of each year] or gasoline exceeds \$4.25 as invoiced.~~ ~~[-The Department will notify all agencies when this surcharge is available.]~~

(5) Surcharge[s]-

~~[(a) A surcharge of \$39.75 may be assessed if the response requires the use of emergency lights and siren.~~

~~————(b) A surcharge of \$39.75 may be assessed for ambulance service between the hours of 8:00 p.m. and 8:00 a.m.~~

~~————(e)](a)~~ If the ambulance is required to travel for ten miles or more on unpaved roads, a surcharge of \$1.50 per mile may be assessed.

(6) Special Provisions -

(a) If more than one patient is transported from the same point of origin to the same point of delivery in the same ambulance, the charges to be assessed to each individual will be determined as follows:

(i) Each patient will be assessed the transportation rate.

(ii) The ~~[emergency surcharge, night surcharge and]~~ mileage rate will be computed as specified, the sum to be divided equally between the total number of patients.

(b) A round trip may be billed as two one-way trips.

(c) An ambulance shall provide 15 minutes of time at no charge at both point of pickup and point of delivery, and may charge \$22.05 per quarter hour or fraction thereof thereafter. On round trips, 30 minutes at no charge will be allowed from the time the ambulance reaches the point of delivery until starting the return trip. At the expiration of the 30 minutes, the ambulance service may charge \$22.05 per quarter hour or fraction thereof thereafter.

(7) [Treat and Release Rate-

~~————(a) An ambulance licensee may charge a treat and release fee of \$200.00 if:~~

~~————(i) a dispatch agency dispatches the ambulance to provide emergency care to an individual;~~

~~————(ii) the ambulance personnel assesses or treats the individual;~~

~~————(iii) the individual does not refuse service; and~~

~~————(iv) the ambulance does not transport the individual.~~

~~————(b) An ambulance licensee may charge for supplies and assess surcharges as provided R426-16-2(5) and R426-16-2(8).~~

~~————(8) [Supplies and Medications -~~

(a) An ambulance licensee may charge for supplies and providing supplies, medications, and administering medications used on any response if:

~~————(i) [S]supplies shall be priced fairly and competitively with similar products in the local area[-];~~

~~(ii) the individual does not refuse services; and  
(iii) the ambulance personnel assess or treats the individual.~~

~~(8)~~ Uncontrollable Cost Escalation -

(a) In the event of a temporary escalation of costs, an ambulance service may petition the ~~EMS Committee~~ Department for permission to make a temporary service-specific surcharge. The petition shall specify the amount of the proposed surcharge, the reason for the surcharge, and provide sufficient financial data to clearly demonstrate the need for the proposed surcharge. Since this is intended to only provide temporary relief, the petition shall also include a recommended time limit.

~~(b) The petition shall be submitted to the Department, which shall within 30 days, notify the ambulance service of the date and time of the next EMS Committee meeting and the disposition of the petition. Prior to the EMS Committee meeting, the Department shall evaluate the petition for reasonableness and prepare a written response for consideration by the EMS Committee. The EMS Committee may reject, modify or adopt the proposed surcharge as a proposed rule and direct the Department to submit a notice of rule change to the Division of Administrative Rules in accordance with the Rulemaking Act. The public comment period shall include a public hearing. The Department will make a final decision on the proposed surcharge within 30 days of receipt of the petition.~~

~~(9)~~ Operating report -

(a) The licensed service shall file with the Department within ~~five months~~ 90 days of the end of each licensed service's fiscal year, an operating report in accordance with the instructions, guidelines and review criteria as specified by the Department ~~in the EMS Committee's "Department of Health Uniform Licensed Service Fiscal Reporting Guide"~~. The Department shall provide a summary of operating reports received during the previous state fiscal year to the EMS Committee in the October quarterly meeting ~~beginning 2001~~.

~~(10)~~ Fiscal audits -

(a) Upon receipt of licensed service fiscal reports, the Department shall review them for compliance to standards established ~~in the "Department of Health Uniform Licensed Service Fiscal Reporting Guide."~~ The Department, or its representative, may audit licensed services to verify the information given in the report.

(b) Where the Department determines that the audited service is not in compliance with this rule, the Department shall proceed in accordance with Section 26-8a-504.

**R426-16-3. Penalty for Violation of Rule.**

~~Any person who violates any provision of this rule may be assessed a penalty as provided in Section 26-23-6. As required by Subsection 63G-3-201(5): Any person that violates any provisions of this rule may be assessed a civil money penalty as provided in Section 26-23-6.~~

**KEY: emergency medical services, ambulance rates**

**Date of Enactment or Last Substantive Amendment: ~~March 15, 2010~~ 2011**

**Notice of Continuation: July 28, 2009**

**Authorizing, and Implemented or Interpreted Law: 26-8a**

**Insurance, Administration  
R590-149  
ADA Complaint Procedure Rule**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34896

FILED: 06/01/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended to comply with changes made in the federal Americans with Disability Act Amendments Act (ADAAA) that went into effect 01/01/2009 and to eliminate the reference in the rule to the "ADA State Coordinating Committee" which has not functioned for about nine years.

**SUMMARY OF THE RULE OR CHANGE:** Changes being made to the rule include: addition of Section 31A-2-201 to the Authority Section (R590-149-1); updating reference to ADAAA; addition of definitions for Department, Designee, Director and the elimination of a definition for ADA State Coordinating Committee; time requirements have been increased for the filing of a complaint after the violation from 60 to 90 days, for filing of an appeal from 5 to 10 working days; final decision on an appeal from 10 to 15 working days; "individual" is changed to "complainant"; requires ADA coordinator or designee to reduce complaints to writing if filed otherwise; ADA records specifically classified under the Government Records Access and Management Act (GRAMA); ADA coordinator or designee are to consult with named state agencies before making recommendations in certain cases; and allows the insurance commissioner to name a designee to assist in the appeal process.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 31A-2-201 and Section 63G-3-201

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Changes to the rule are for clarification purposes mainly and will allow more time to file a complaint, an appeal, and a final decision on an appeal. These changes will not affect department or state revenues or costs, nor the department's workload.

◆ **LOCAL GOVERNMENTS:** The rule itself relates solely to the Insurance Department requiring that no individual be excluded from participation in or be denied the benefits of the services, programs, or activities of the department or be subjected to discrimination by the department because of a disability.

◆ **SMALL BUSINESSES:** Changes to the rule are for clarification purposes mainly and will allow more time for individuals to file a complaint and an appeal with the

department, and also gives the department more time to give a final decision on an appeal. These changes are a matter of procedure and should create no financial impact.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Changes to the rule are for clarification purposes mainly and will allow more time for individuals, either representing themselves, or a business or government entity, to file a complaint and an appeal with the department, and also gives the department more time to give a final decision on an appeal. These changes are a matter of procedure and should create no financial impact.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Changes to the rule are for clarification purposes mainly and will allow more time for individuals, either representing themselves, or a business or government entity, to file a complaint and an appeal with the department, and also gives the department more time to give a final decision on an appeal. These changes are a matter of procedure and should create no financial impact.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule should not have a fiscal impact on anyone who complies with the changes.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Jilene Whitby, Information Specialist

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

#### **R590-149. Americans with Disabilities Act (ADA) Grievance [Complaint] Procedures[Rule].**

##### **R590-149-1. Authority and Purpose.**

[A-](1) This rule is promulgated pursuant to Section 31A-2-201(3)(a) and Subsection 63G-3-201([2]3) of the State Administrative Rulemaking Act. The Insurance Department, pursuant to 28 CFR 35.107, [1992 edition,] adopts, defines, and publishes within this rule complaint procedures providing for

prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, as amended.

[B-](2) The purpose of this rule is to implement the provisions of 28 CFR 35, [1992 edition, implements the provisions of] and Title II of the Americans With Disabilities Act, [42 U.S.C. 12201,] which provides that no [qualified] individual [with a disability, by reason of such disability,] shall be excluded from participation in or be denied the benefits of the services, programs or activities of the Insurance Department, or be subjected to discrimination by [this or any such entity] the department because of a disability.

##### **R590-149-2. Definitions.**

[A-](1) "The ADA Coordinator" means the [Insurance Department's coordinator or his designee who has responsibility for investigating and providing] employee assigned by the commissioner to investigate and facilitate the prompt and equitable resolution of complaints filed by qualified [individuals] persons with disabilities. The ADA Coordinator may be a representative of the Department of Human Resource Management assigned to the department.

[B-] "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

- (1) Office of Planning and Budget;
- (2) Department of Human Resources Management;
- (3) Division of Risk Management;
- (4) Division of Facilities Construction Management; and
- (5) Office of the Attorney General.

[C-](2) "Department" means the Insurance Department.

(3) "Designee" means an individual appointed by the commissioner or a director to investigate allegations of ADA non-compliance in the event the ADA Coordinator is unable or unwilling to conduct an investigation for any reason, including a conflict of interest. A designee does not have to be an employee of the department; however, the designee must have a working knowledge of the responsibilities and obligations required of employers and employees by the ADA.

(4) "Director" means the head of the division of the department affected by a complaint filed under this rule.

(5) "Disability" means, with respect to an individual [with a disability], a physical or mental impairment that substantially limits one or more of the major life activities of such [an] individual; a record of such an impairment; or being regarded as having such an impairment.

[D-](6) "Major life activities" [means functions such as] includes caring for one's self, performing manual tasks, walking, seeing, hearing, eating, sleeping, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking and working. A major life activity also includes the operation of a major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

[E-](7) "Qualified Individual [with a disability]" [hereinafter individual] means [a person who has a disability which limits one of his major life activities and] an individual who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the

~~[Insurance Department]department[, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state]. A qualified individual also who, with or without reasonable accommodation, can perform the essential functions of the employment position that individual holds or desires.~~

### **R590-149-3. Filing of Complaints.**

~~[A. The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 60 days from the date of the alleged act of discrimination. However, any complaint alleging an act of discrimination occurring between January 26, 1992 and the effective date of this rule may be filed within 60 days of the effective date of this rule.~~

~~\_\_\_\_\_ B. The complaint shall be filed with the Insurance Department's ADA Coordinator in writing or in another acceptable format suitable to the individual.](1) Any qualified individual may file a complaint alleging noncompliance with Title II of the Americans with Disabilities Act, as amended, or the federal regulations promulgated thereunder.~~

~~\_\_\_\_\_ (2) Qualified individuals shall file their complaints with the department's ADA coordinator, unless the complaint alleges that the ADA coordinator was non-compliant, in which case qualified individuals shall file their complaints with the department's designee.~~

~~\_\_\_\_\_ (3) Qualified individuals shall file their complaints within 90 days after the date of the alleged noncompliance to facilitate the prompt and effective consideration of pertinent facts and appropriate remedies; however, the commissioner has the discretion to direct that the grievance process be utilized to address legitimate complaints filed more than 90 days after alleged noncompliance.~~

~~[C.](4) Each complaint shall:~~

~~[(1)a] include the individual's name and address;~~

~~[(2)b] include the nature and extent of the individual's disability;~~

~~[(3)c] describe the department's alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;~~

~~[(4)d] describe the action and accommodation desired; and~~

~~[(5)e] be signed by the [individual]complainant or by his [or her]legal representative.~~

~~[D.](5) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.~~

~~\_\_\_\_\_ (6) If the complaint is not in writing, the ADA coordinator or designee shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.~~

~~\_\_\_\_\_ (7) By the filing of a complaint or a subsequent appeal, the complainant authorizes necessary parties to conduct a confidential review all relevant information, including records classified as private or controlled under the Government Records Access and Management Act, Utah Code, Subsection 63G-2-302(1) (b) and Section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4) (A), (B), and (C) and 42 U.S.C. Section 12112(d)(3)(B) and (C), and relevant information otherwise protected by statute, rule, regulation, or other law.~~

### **R590-149-4. Investigation of Complaint.**

~~[A.](1) The ADA [C]coordinator or designee shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Subsection [3(C)]R590-149-3(4) and (7) of this rule if it is not made available by the [individual]complainant.~~

~~[B. When conducting the investigation, the coordinator may seek assistance from the Insurance Department's legal, human resource and budget staffs in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve:~~

~~\_\_\_\_\_ (1) an expenditure of funds which is not absorbable within the agency's budget and would require appropriate authority;~~

~~\_\_\_\_\_ (2) facility modifications; or~~

~~\_\_\_\_\_ (3) reclassification or reallocation in grade; the coordinator shall consult with the ADA State Coordinating Committee.](2) The ADA coordinator or designee may seek assistance from the Attorney General's staff, and the department's human resource and budget staff in determining what action, if any, should be taken on the complaint. The ADA coordinator or designee may also consult with the director of the affected division in making a recommendation.~~

~~\_\_\_\_\_ (3) The ADA coordinator or designee shall consult with representatives from other state agencies that may be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any recommendation that would:~~

~~\_\_\_\_\_ (a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;~~

~~\_\_\_\_\_ (b) require facility modifications; or~~

~~\_\_\_\_\_ (c) require reassignment to a different position.~~

### **R590-149-5. Issuance of Decision.**

~~[A.](1) Within 15 working days after receiving the complaint, the ADA [C]coordinator or designee shall [issue a decision outlining]recommend to the director in writing or in another acceptable suitable format stating what action, if any, [shall]should be taken on the complaint.~~

~~[B.](2) If the coordinator or designee is unable to [reach a decision]make a recommendation within the 15 working day period, [he]the complainant shall [notify the individual with a disability]be notified in writing, or by another acceptable format suitable [format]to the complainant, stating why the [decision]recommendation is [being] delayed and what additional time is needed[ to reach a decision].~~

~~\_\_\_\_\_ (3) The director may confer with the ADA coordinator or designee and the complainant and may accept or modify the recommendation to resolve the complaint. The director shall render a decision within 15 working days after the director's receipt of the recommendation from the ADA coordinator or designee. The director shall take all reasonable steps to implement the decision. The director's decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.~~

**R590-149-6. Appeals.**

~~[A-](1) The [individual]complainant may appeal the decision of the [ADA Coordinator]director to the commissioner by filing an appeal within [five]ten working days from the receipt of the director's decision.~~

~~[B-](2) The appeal shall be filed in writing, or in another accessible format reasonably suited to the complainant's ability, [with the Insurance Department's executive director or a designee other than the Department's ADA Coordinator.]~~

~~[C-](3) [The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the Department's executive director or designee.]The commissioner may name a designee to assist on the appeal. The ADA coordinator and the director's designee may not also be the commissioner's designee for the appeal.~~

~~[D-](4) In the[The] appeal the complainant shall describe in sufficient detail why the [eordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper]decision does not effectively address the complainant's needs.~~

~~[E-](5) The [executive director]commissioner or designee shall review the [factual findings of the investigation and the individual's statement regarding the inappropriateness of the eordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion.—]ADA coordinator's recommendation, the director's decision, and the points raised on appeal prior to reaching a decision. The commissioner may direct additional investigation as necessary. The commissioner shall consult with representatives from other state agencies that would be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General [B]before making any decision that would[involve]:~~

~~[(1)a] involve an expenditure of funds [which is not absorbable—and]beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation [authority];~~

~~[(2)b] require facility modifications; or~~

~~[(3)c] [reclassification or reallocation in grade; the executive director or designee shall also consult with the State ADA Coordinating Committee]require reassignment to a different position.~~

~~[F-](6) The final decision shall be issued by the commissioner within [ten]fifteen working days after receiving the complainant's appeal and shall be in writing or in another accessible format suitable [format-]to the [individual]complainant, and shall be promptly delivered to the complainant.~~

~~[G-](7) If the [executive director]commissioner or [his-] designee is unable to reach a final decision within the [ten]fifteen working day period, he shall notify the [individual]complainant in writing or by another [acceptable]accessible format suitable to the complainant, [format-]why the final decision is being delayed and the additional time needed to reach a decision.~~

**R590-149-7. Classification of Records.**

~~(1) [The record of each complaint and appeal, and all written records produced or received as part of such actions, shall be]Records created in administering this rule are classified as "protected" [as defined-]under Subsection 63G-2-305(9), (22), (24), and (25).~~

~~(2) [until the ADA coordinator, executive director or their designees issue the decision at which time any portions of the record which may pertain to the individual's]After issuing a decision under Section R590-149-5 or a final decision upon appeal under Section R590-149-6, portions of the record pertaining to the complainant's medical condition shall remain classified as "private" as defined under Section 63G-2-302(1)(b) or "controlled" as defined in Section 63G-2-304, as consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. 12112(d)(3)(B) and (C), at the option of the ADA coordinator. [All other information gathered as part of the complaint record shall be classified as private information.]~~

~~(a) [Only-]The written decision of the [eordinator]division director[-] or [executive director]commissioner [or designees-]shall be classified as "public" information. All other records, except "controlled" records under Subsection R590-149-7(2), shall be classified as "private."~~

**R590-149-8. Relationship to Other Laws.**

This rule does not prohibit or limit the use of remedies available to individuals under:

~~(1) the [S]state Anti-Discrimination Complaint Procedures Section [(67-19-32)] and 34A-5-107;~~

~~(2) the Federal ADA Complaint Procedures [(28 CFR [Subpart F, beginning with Part ]35.170[-1992 edition])] through 28 CFR 35.178; or~~

~~(3) any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.~~

**KEY: insurance, ADA**

**Date of Enactment or Last Substantive Amendment:** ~~[1992]2011~~

**Notice of Continuation:** June 26, 2007

**Authorizing, and Implemented or Interpreted Law:** 63G-3-201(2)

**Insurance, Administration**  
**R590-207**  
**Health Agent Commissions for Small Employer Groups**

**NOTICE OF PROPOSED RULE**  
**(Amendment)**

DAR FILE NO.: 34892

FILED: 06/01/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The rule is being amended to clarify the acceptable and unacceptable commission structures.

**SUMMARY OF THE RULE OR CHANGE:** Amendments made to the rule include: changing terminology, "agent" to "producer;" disallowing insurers to structure producer commissions in a way that would restrict the sale of health insurance to small employer groups; placing the table of commission structure examples into a section entitled "Commission Structure Examples;" and renaming the "Compliance Date" section (R590-207-8) to "Enforcement Date" providing 45 days after the effective date of the rule before it will be enforced.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 31A-2-201 and Section 31A-30-104

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The changes to this rule will have no fiscal impact on the work load or revenues of the department or state budget. Insurers will not be required to file forms or rates with the department as a result of these changes.

◆ **LOCAL GOVERNMENTS:** This rule will have no fiscal impact on local governments since it deals solely with the relationship between the department and its licensees and in this case deals with the commission structure for producers selling insurance to small employer groups.

◆ **SMALL BUSINESSES:** The changes to this rule clarify that small employer insurers are prohibited from structuring their producer commissions in a way that reduces a producer's incentive to insure the smallest employer groups and those with the greatest health risk. Insurers are already complying with the requirements of this rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The rule prohibits insurers (large businesses) from changing the commission structure for their producers in a way that reduces their incentive to insure the smallest employer groups or those with health risks. Insurers are already complying with the requirements of this rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The changes to this rule prohibits insurers (large businesses) from altering their producer commissions in a way that reduces their incentive to insure small employer groups based on their size or health risks. Insurers are already complying with the requirements of this rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There should be no fiscal impact on any entity. The changes merely clarify existing requirements.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Jilene Whitby, Information Specialist

**R590. Insurance, Administration.**

**R590-207. Health ~~Agent~~Producer Commissions for Small Employer Groups.**

**R590-207-1. Authority.**

This rule is issued and based upon the authority granted the commissioner under Subsections 31A-2-201(3)(a) and 31A-30-104~~(6)~~.

**R590-207-2. Purpose.**

The purpose of this rule is to establish guidelines relating to commission structure for ~~[small group health]~~insurance ~~[agent]producers~~ in the small employer group market that affect access to health insurance coverage for small employer groups.

**R590-207-3. Applicability.**

This rule applies to all licensed ~~[insurers]~~carriers doing health insurance business under Title 31A, Chapter 30, the Individual and Small Employer Health Insurance Act.

**R590-207-4. Definitions.**

The definitions in Sections 31A-1-301 and 31A-30-103 apply to this rule.

**R590-207-5. Commission Schedule ~~[Policy]~~Structure.**

(1) A health insurance carrier shall not structure ~~[agent]producer~~ commission ~~[rates]~~schedule in a way that, directly or indirectly, creates a restriction, hindrance, or barrier to access to coverage for the smallest size groups or groups with the greatest health risks~~[identified in the commission schedule]~~.

(2) The commission in the commission schedule for the smallest size groups or the groups with the greatest health risks~~[in the commission schedule]~~ may not be designed to avoid, directly or indirectly, the requirements of guaranteed issue or renewal in the marketing of health insurance to small business owners.

(3) An insurer shall not design a commission structure that lessens the incentive to insure a small employer group that is smallest in size or with the greatest health risks.

(4) An insurer is not required to base commissions on a percentage. An insurer is permitted to pay no commissions on all business or to pay a dollar amount based on factors other than risk characteristics.

TABLE

ACCEPTABLE EXAMPLES:

~~A commission structure that is in compliance would be: an employer group size 2-5 would receive a 10% commission, an employer group size 6-25 would receive a 9% commission, and an employer group size 26-50 would receive a 7% commission.~~

~~Another example of an acceptable commission schedule would be: for employer group size 2-5 the commission would be \$20/Per Member Per Month(PMPM), for employer group size 6-25 the commission would be \$18/PMPM, and for employer group size 26-50 the commission would be \$16/PMPM.~~

Case Size in Lives	Rate Up	Comm. Rate
2-24	< 22%	12%
2-24	22% to <44%	8%
2-24	44% to <65%	8%
2-24	65% to 85%	7%
25-50		8%

UNACCEPTABLE EXAMPLE:

Case Size in Lives	First Year	Renewal
Up to 3	3%	3%
4-14	8%	8%
15-29	7%	7%
30-50	6%	6%

Case Size in Lives	Rate Up	Comm. Rate
2-24	< 22%	12%
2-24	22% to <44%	10%
2-24	44% to <65%	8%
2-24	65% to 85%	6%
25-50		8%

**R590-207-6. Commission Structure Examples.**

(1) Examples of commission structures that are in compliance would be:

(a)(i) a 10% commission for employer group size 2-5;

(ii) a 9% commission for group size 6-25; and

(iii) a 7% commission for group size 26-50; or

(b)(i) \$20/ Per Member Per Month (PMPM) for employer group size 2-5;

(ii) \$18/PMPM for group size 6-25; and

(c) \$16/PMPM for group size 26-50.

(2) An example of a commission structure that is not in compliance would be:

(i) 3% commission for employer group size 2-5;

(ii) 8% commission for group size 6-25; and

(iii) 7% commission for group size 26-50.

**R590-207-7. Penalties.**

Any carrier with a commission structure ~~[that is not in compliance with this rule after the effective date of this rule will be considered in violation of this rule and will]~~ found to be in violation of this rule shall be subject to the penalties provided for in Section 31A-2-308.

**R590-207-[7]8. [Compliance]Enforcement Date.**

~~[This rule is in effect on the date stated in the Notice of Effective Date form relating to this rule that the department files with the Division of Administrative Rules (the "effective date"). The effective date will follow a period of 30 days during which interested parties will have time to prepare to be in compliance with this rule. It will also be the date on which the department will begin enforcing this rule. The Notice of Effective Date is published in the Utah State Bulletin, a publication of the Division of Administrative Rules. The Utah State Bulletin is found at the website, <http://www.rules.state.ut.us/>. In addition, the effective date may be found at the department's website, <http://www.insurance.utah.gov> by clicking on INDUSTRY RESOURCES and then RULES and scrolling down to the appropriate reference to the rule]The commissioner will begin enforcing the amendments to this rule 45 days from the rule's effective date.~~

**R590-207-[8]9. Severability.**

If any provision or clause of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of these provisions shall not be affected.

**KEY: insurance law**

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

~~[September 30, 2001]2011~~

**Notice of Continuation: September 1, 2006**

**Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-202**

Natural Resources, Parks and  
Recreation  
**R651-201-6**  
Tow(ed)(ing)

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34864

FILED: 05/23/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Many new water sports have developed over the years. Originally those who participated were always connected to the vessel, but that isn't the case now.

**SUMMARY OF THE RULE OR CHANGE:** Several of the modern water sports such as wake surfing start out by being attached to the vessel, but end up dropping the tow rope where they continue along behind the vessel by riding the wake created by the vessel. A definition needs to be created

to include those involved in these types of activities with traditional water sports.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 73, Chapter 18

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: This is a definition change, there will be no cost or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: This is a definition change, there will be no cost or savings to local government.
- ◆ SMALL BUSINESSES: This is a definition change, there will be no cost or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule is a definition change, so there is no cost or savings to anyone.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This is a definition change, so there are no compliance costs for any affected person associated with this change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Should have no impact.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Fred Hayes, Acting Operations Deputy Director

#### **R651. Natural Resources, Parks and Recreation.**

##### **R651-201. Definitions.**

##### **R651-201-6. Tow(ed)(ing).**

When used in watersports, "tow(ed)(ing)" means a person(s) who is being pulled behind a vessel either on a device and attached to the vessel or has been pulled behind the vessel, is not currently attached and is surfing or riding the wake created by the vessel.

**KEY: boating, parks**

**Date of Enactment or Last Substantive Amendment: [~~August 7, 2007~~2011]**

**Notice of Continuation: January 26, 2011**

**Authorizing, and Implemented or Interpreted Law: 73-18**

## Natural Resources, Parks and Recreation **R651-206-2** Outfitting Company Responsibilities

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34865

FILED: 05/23/2011

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** When the "Carrying Passengers for Hire" rule was written, an outfitting company was defined by the elements of the business rather than listing what types of businesses are outfitting companies.

**SUMMARY OF THE RULE OR CHANGE:** The Division has had several complaints that individuals were not aware that their businesses were considered an outfitting company. They had searched the internet for "fishing guide" to see what the requirements were and did not find out information because the words "fishing guide" did not appear in the rule. By listing the most common types of outfitters in the rule, the Division hopes those that are doing internet searches will be able to locate important information.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 73-18-4(4)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: This is a rule clarification, there will be no cost or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: This is a rule clarification, there will be no cost or savings to the local government.
- ◆ SMALL BUSINESSES: This is a rule clarification, there will be no cost or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This is a rule clarification, there will be no cost or savings to anyone other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This is a rule clarification only. There are no compliance costs associated with this change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Impact on business should be minimal.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Fred Hayes, Acting Operations Deputy Director

**R651. Natural Resources, Parks and Recreation.**

**R651-206. Carrying Passengers for Hire.**

**R651-206-2. Outfitting Company Responsibilities.**

(1) Each outfitting company carrying passengers for hire on waters of this state shall register with the Division annually, prior to commencement of operation. Outfitting companies include, but are not limited to, fishing guides, waterski or sailing schools, river trip companies and tour boat operators.

(a) Outfitting company registration with the Division requires the completion of the prescribed application form and providing the following:

(i) Evidence of a current and valid business license;  
(ii) Evidence of a current and valid river trip authorization(s), Special Use Permit(s), or performance contract(s) issued by an appropriate federal or state land managing agency;

(iii) Evidence of general liability insurance coverage; and

(iv) Payment of a \$150 fee for an outfitting company whose place of business is physically located within the State of Utah, or

(v) Payment of a \$200 fee for an outfitting company whose place of business is physically located outside of the State of Utah.

(b) Owners and employees of a migratory bird production area created under Title 23, Chapter 28, Migratory Bird Production Area and operating within that Migratory Bird Production Area shall not be considered an outfitting company.

(2) Upon successful registration with the Division, the Division shall issue a certificate of outfitting company registration in the name of the outfitting company. An outfitting company shall display its certificate of outfitting company registration at its place of business in a prominent location, visible to persons and passengers who enter the place of business.

(3) An agent of an outfitting company shall certify that each license or permit applicant sponsored by the outfitting company has:

(a) Obtained the minimum levels of required vessel operation experience corresponding to the type of license or permit applied for;

(b) Obtained the appropriate first aid and CPR certificates; and

(c) Completed the prescribed application form with true and correct identifying information.

(4) An outfitting company's annual registration with the Division may be suspended, denied, or revoked for a length of time determined by the Division director, or an individual designated by the Division director, if one of the following occurs:

(a) The outfitting company's, or agent's negligence caused personal injury or death as determined by due process of law;

(b) The outfitting company or agent is convicted of three violations of Title 73, Chapter 18, or rules promulgated thereunder during a calendar year period;

(c) False or fictitious statements were certified or false qualifications were used to qualify a person to obtain a license or permit for an employee or others;

(d) The Division determines that the outfitting company intentionally provided false or fictitious statements or qualifications when registering with the Division;

(e) The outfitting company has utilized a private trip permit for carrying passengers for hire and has been prosecuted by the issuing agency and found guilty of the violation;

(f) The outfitting company used a vessel operator without a valid license or permit or without the appropriate license or permit while engaging in carrying passengers for hire; or

(g) The outfitting company is convicted of violating a resource protection regulation or public safety regulation in effect by the respective land managing and/or access permitting agency.

(5) An outfitting company shall have a written policy describing a program for a drug free workplace.

(6) An outfitting company shall maintain a training log for each of its vessel operators.

(7) An outfitting company shall maintain a voyage plan and a passenger manifest, on shore, for each trip or excursion the company conducts.

(8) An outfitting company shall maintain a daily or trip operations log for each of its vessels.

(9) An outfitting company shall ensure that each of its vessel operators conducts a check of the vessel he or she will be operating. The vessel check shall include:

(a) Passenger count;

(b) A discussion of safety protocols and emergency operations with passengers on board the vessel.

(c) A check of the vessel's required carriage of safety equipment.

- (d) A check of the vessel's communication systems;
  - (e) A check of the operation and control of the vessel's steering controls and propulsion system; and
  - (f) A check of the vessel's navigation lights, if the vessel will be operating between sunset and sunrise.
- (10) An outfitting company shall ensure that each vessel in its fleet is equipped with the required safety equipment.
- (11) An outfitting company shall maintain each vessel in its fleet according to good marine practices and standards.
- (a) The outfitting company shall ensure that each vessel used in the service of carrying passengers for hire meets the maintenance and inspection requirements, if such inspections are required of a vessel.
- (b) The outfitting company shall maintain a file of its maintenance and inspections for each vessel, or the components and equipment that configure a float trip vessel, that is required to be inspected in its fleet. Maintenance and inspection files shall be maintained for the duration in which the vessel is in the service of carrying passengers for hire, plus one additional year.
- (12) The owner of a vessel carrying passengers for hire, shall carry general liability insurance. The insurance coverage shall be for a minimum of \$1,000,000 aggregate per incident.
- (13) Upon request of an agent of the Division, an outfitting company shall provide the Division with a copy of the company's
- (a) Drug free workplace policy;
  - (b) A passenger manifest and trip voyage plan;
  - (c) Trip operation logs;
  - (d) A vessel's maintenance and inspection files; or
  - (e) A vessel operator's training log.
- (14) An outfitting company that is registered to carry passengers for hire in another state and possesses a state-issued certificate of outfitting company registration, or similar license, permit or registration accepted and recognized by the Division, where the state has similar outfitting company registration provisions, shall not be required to obtain and display a Utah certificate of outfitting company registration as required by this section when:
- (a) Operating vessels on Bear Lake, Flaming Gorge, and Lake Powell where a trip embarks and disembarks from the out-of-state portion of the lake and less than 25 percent of a trip is conducted on the Utah portion of the lake.
  - (b) Operating vessels on rivers flowing into Utah where the river trip originates out-of-state and terminates at the first available launch ramp/take-out.
    - (i) For vessels operating on the Colorado River, the first available take-out is the Westwater Ranger Station launch ramp/take-out.
    - (ii) For vessels operating on the Dolores River, the first available take-out is the Dewey Bridge launch ramp/take-out on the Colorado River.
    - (iii) For vessels operating on the Green River, the first available take out is the Split Mountain launch ramp/take-out.
    - (iv) For vessels operating on the San Juan River, the first available take-out is the Montezuma Creek launch ramp/take-out.

**KEY: boating, parks**  
**Date of Enactment or Last Substantive Amendment: [~~August 9, 2010~~ July 22, 2011**  
**Notice of Continuation: January 11, 2011**  
**Authorizing, and Implemented or Interpreted Law: 73-18-4(4)**

**Natural Resources, Parks and  
 Recreation  
 R651-224-3  
 Flag Required**

**NOTICE OF PROPOSED RULE  
 (Amendment)  
 DAR FILE NO.: 34866  
 FILED: 05/23/2011**

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The wording in the rule concerning display of the ski flag has caused some confusion among boaters and the Division has had several people challenge the rule because it did not say that the flag could only be used while the skier is down.

**SUMMARY OF THE RULE OR CHANGE:** The intent of the ski flag is to warn others in the area that someone is down in the water. If boaters keep the ski flag up the entire time, it makes the warning ineffective. This working will make it more clear that the flag is only to be used while the skier is down.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 73-18-15

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** This is a rule clarification, there will be no cost or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** This is a rule clarification, there will be no cost or savings to local governments.
- ◆ **SMALL BUSINESSES:** This is a rule clarification, there will be no cost or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This is a rule clarification, there will be no cost or savings to persons or entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This is a rule clarification, there will be no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Should be no impact on business.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Fred Hayes, Acting Operations Deputy Director

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**R651. Natural Resources, Parks and Recreation.**

**R651-224. Towed Devices.**

**R651-224-3. Flag Required.**

The operator of a vessel engaged in a towed watersport shall be responsible for a flag to be displayed by the observer in a visible manner to other boaters in the area only [while the]when a person to be towed is in the water, either preparing to be towed or finishing a tow. The flag shall be international orange at least 12 inches square and mounted on a handle.

**KEY: boating, water skiing**

**Date of Enactment or Last Substantive Amendment: [August 22, 2006]July 22, 2011**

**Notice of Continuation: January 11, 2011**

**Authorizing, and Implemented or Interpreted Law: 73-18-15**

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Natural Resources, Parks and  
Recreation  
**R651-606-5**  
Time-Limit in Campsite may not be  
Exceeded

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34889

FILED: 05/31/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** As the division works toward self-sufficiency, a wide variety of programmatic adjustments designed to generate revenue and reduce operating costs have been examined. Most of those adjustments involved a shift in paradigm. Over the past several months, park managers have been asked to aggressively pursue ways to enhance their revenue. They have indicated that an option to lease camping spaces for a longer term, especially during the off-peak season would significantly enhance their profitability and would provide a much sought after service.

**SUMMARY OF THE RULE OR CHANGE:** Camping is currently limited to 14 consecutive days, except for Snow Canyon State Park where a 5-day limit is established. This change would extend the amount of time a person could camp if camping in a long-term campsite when an agreement has been signed.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 79-4-501

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** This rule change allows the Division to extend the 14-day stay limit in designated state park campsites and will add no additional cost to state park budgets, nor will it result in any savings to state budgets. It should, however, increase the revenue made by the state at the parks where it is implemented.

♦ **LOCAL GOVERNMENTS:** The amendments do not affect local government because local government is not involved in the issuing camping permits for state parks.

♦ **SMALL BUSINESSES:** This rule will not increase cost or savings to small business, but may result in increased revenue to retail outlets near state parks as a result of longer term campers.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule will have no impact on persons other than those who choose to stay in a state park for longer than the current 14-day stay limit. Those individuals will be positively impacted by this enhanced opportunity.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The only persons affected as a result of this rule change are those individuals who have traditionally desired to stay longer than 14 days, which is the current maximum stay in a state park. Since this rule is not regulatory, but rather grants permission for the Division to extend that opportunity, no compliance costs are anticipated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change should have a minimal impact on business.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Fred Hayes, Acting Operations Deputy Director

**R651. Natural Resources, Parks and Recreation.**

**R651-606. Camping.**

**R651-606-5. Time-Limit in Campsite may not be Exceeded.**

No person shall exceed the limitation on the length of time persons may camp within a park area as approved in the park system fee schedule 79-4-203 unless

(a) the person is occupying a designated long-term campsite, and

(b) a long-term camping agreement has been signed by the occupant and the park manager.

**KEY: parks**

**Date of Enactment or Last Substantive Amendment: [~~August 21, 2006~~ July 22, 2011]**

**Notice of Continuation: July 7, 2008**

**Authorizing, and Implemented or Interpreted Law: 79-4-501**

Natural Resources, Parks and  
 Recreation  
**R651-611-3**  
 Camping Fees

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34890

FILED: 05/31/2011

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As the division works toward self-sufficiency, a wide variety of programmatic adjustments designed to generate revenue and reduce operating costs have been examined. Most of those adjustments involved a shift in paradigm. Over the past several months, park managers have been asked to aggressively pursue ways to enhance their revenue, they have indicated that an option to lease camping spaces for a longer term, especially during the off-peak season would significantly enhance their profitability and would provide a much sought after service.

SUMMARY OF THE RULE OR CHANGE: Camping is currently limited to 14 consecutive days, except for Snow Canyon State Park where a 5-day limit is established. This change would extend the amount of time a person could camp if camping in a long-term campsite when an agreement has been signed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 79-4-203(8)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: This rule change simply allows the Division to extend the 14-day stay limit in designated state park campsites and will add no additional cost to state park budgets, nor will it result in any savings to state budgets. It should, however, increase the revenue made by the state at the parks where it is implemented.

♦ LOCAL GOVERNMENTS: The amendments do not affect local government because local government is not involved in the issuing camping permits for state parks.

♦ SMALL BUSINESSES: This rule will not increase cost or savings to small business, but may result in increased revenue to retail outlets near state parks as a result of longer term campers.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule will have no impact on persons other than those who choose to stay in a state park for longer than the current 14-day stay limit. Those individuals will be positively impacted by this enhanced opportunity.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only persons affected as a result of this rule change are those individuals who have traditionally desired to stay longer than 14 days, which is the current maximum stay in a state park. Since this rule is not regulatory, but rather grants permission for the Division to extend that opportunity, no compliance costs are anticipated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should have minimal impact on business around State Parks.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Fred Hayes, Acting Operations Deputy Director

**R651. Natural Resources, Parks and Recreation.**  
**R651-611. Fee Schedule.**  
**R651-611-3. Camping Fees.**

Permits overnight camping and day use for the day of arrival until 2:00 p.m. of the following day or each successive day. Camp sites must be vacated by 12:00 noon following the last camping night at Dead Horse Point. [Camping] Except as provided in R651-606-5, camping is limited to 14 consecutive days at all campgrounds with the exception of Snow Canyon State Park, with a five (5) consecutive day limit.

A. Individual Sites -- One (1) vehicle with up to eight (8) occupants and any attached recreational equipment as one (1) independent camp unit. Fees for individual sites are based on the following schedule:

1. \$10.00 with pit or vault toilets; \$13.00 with flush toilets; \$16.00 with flush toilets and showers or electrical hookups; \$20.00 with flush toilets, showers and electrical hookups; \$25.00 with full hookups.

2. Primitive camping fees may be decreased at the park manager's discretion dependent upon the developed state of the facilities to be used by park visitors. Notification of the change must be made to the Division's financial manager and reservations manager before the reduced fee can be made effective.

3. Special Fun Tag holders may receive a \$2.00 discount for individual camping sites Monday through Thursday nights, excluding holidays.

4. One-half the campsite fee rounded up to the nearest dollar will be charged per vehicle at all parks and individual camping sites for all additional transportation vehicles that are separate and not attached to the primary vehicle, but are dependent

upon that unit. No more than one additional vehicle is allowed at any individual campsite. This fee is not applicable at primitive campsites.

B. Group Sites - (by advance reservation for groups)

1. The following fees will apply to Overnight Group

Camping:

TABLE 17

1. Reservation Fee: \$10.65 at the following parks:

Bear Lake - Eastside -	\$ 75.00
Bear Lake - Big Creek -	\$ 75.00
Bear Lake - Willow -	\$ 75.00
Bear Lake Marina -	\$ 75.00
Deer Creek - Wallsburg -	\$400.00
East Canyon - Large Springs -	\$ 50.00
East Canyon - Mormon Flats -	\$ 75.00
East Canyon - New -	\$200.00
Escalante Group Area -	\$ 50.00
Fremont - Group Area -	\$ 70.00
Hyrum -	\$150.00
Jordanelle - Beach	\$250.00
Jordanelle - Cover	\$250.00
Jordanelle - Keatley	\$250.00
Jordanelle - Rock Cliff North	\$250.00
Jordanelle - Rock Cliff South	\$250.00
Kodachrome - Arches -	\$ 65.00
Kodachrome - Oasis -	\$ 65.00
Otter Creek -	\$100.00
Rockport - Hawthorne	\$150.00
Rockport - Riverside	\$150.00
Rockport - Old Church	\$150.00
Snow Canyon - Quail Group Area	\$ 65.00
Steinaker -	\$200.00
Wasatch - Soldier Hollow Chalet	\$250.00
Willard - Pelican Beach (250 max)	\$350.00
Yuba - Painted Rocks	\$100.00
Yuba - Oasis	\$100.00

2. \$3.00 per person at Dead Horse (minimum - \$45.00)

3. \$3.00 per person at Goblin Valley, Green River No.1 and No. 2, Starvation, Palisade and Scofield (minimum) - \$75.00

4. \$3.00 per person and \$2 per vehicle. Antelope Island (minimum) \$60.00

**KEY: parks, fees**

**Date of Enactment or Last Substantive Amendment:** ~~April 7, 2011~~ **July 22, 2011**

**Notice of Continuation:** January 24, 2011

**Authorizing, and Implemented or Interpreted Law:** 79-4-203(8)

**Pardons (Board of), Administration**  
**R671-102**  
**Americans with Disabilities Act**  
**Complaint Procedures Rule**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34867

FILED: 05/24/2011

ROOM 300

448 E 6400 S

SALT LAKE CITY, UT 84107-8530

or at the Division of Administrative Rules.

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Board's original ADA rule referred to an "ADA State Coordinating Committee." This committee has not functioned for approximately nine years, yet our ADA administrative rule still referred to this defunct committee. In addition, the ADA was amended effective 01/01/2009.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule detail who, within the Board staff, will handle ADA complaints and the time allotted to them to address and resolve them. These changes have been suggested and evaluated by the Attorney General's office to ensure compliance with ADA, and remove references to the defunct committee named above.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-32 and Title 63G, Chapter 2

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The state budget is not impacted by the changes in this rule because they are merely a change of who handles ADA complaints at the Board and the time limits within our agency for handling them. These are internal process changes.

♦ LOCAL GOVERNMENTS: Local government is not impacted by the changes in this rule because they are merely a change of who handles ADA complaints at the Board and the time limits within our agency for handling them. These are internal process changes.

♦ SMALL BUSINESSES: Small businesses are not impacted by the changes in this rule because they are merely a change of who handles ADA complaints at the Board and the time limits within our agency for handling them. These are internal process changes.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Other persons are not impacted by the changes in this rule because they are merely a change of who handles ADA complaints at the Board and the time limits within our agency for handling them. These are internal process changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with changing an internal process of handling ADA complaints.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--No impact on business.

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

PARDONS (BOARD OF)  
ADMINISTRATION

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 05/23/2011 08:00 AM, Board of Pardons and Parole, 448 E 6400 S, Suite 300, Murray, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Clark Harms, Chairman

**R671. Pardons (Board of), Administration.**

**R671-102. Americans with Disabilities Act Complaint Procedures.**~~[Rule.]~~

**R671-102-1. ~~[Purpose and Authority.]~~ Authority and Purpose.**

~~[A.](1) This rule is [promulgated pursuant to Section 63G-3-201 (2)]made under authority of Utah Code Ann. Subsection 63G-3-201(3).~~[of the State Administrative Rulemaking Act.]~~ The Board of Pardons and Parole (Board) adopts, defines, and publishes within this rule [complaint]the grievance procedures [to provide]for the prompt and equitable resolution of complaints [filed in accordance with]alleging any action prohibited by Title II of the Americans with Disabilities Act, [42 U.S.C. 12131-12134]as amended.~~

~~[B.](2) [No qualified individual with a disability, by reason of such disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of this agency, or be subjected to discrimination by this agency.]The purpose of this rule is to implement the provisions of Title II of the Americans with Disabilities Act, which provides that no individual shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the Board because of a disability.~~

**R671-102-2. Definitions.**

~~[A.](1) "[The]ADA Coordinator" [or "Coordinator"] means the Board's [of Pardons and Parole]Administrative Coordinator, [or other Board designee, who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities in accordance with the Americans With Disabilities Act, or provisions of this rule.]assigned by the Board's Chairperson to investigate and facilitate the prompt and equitable resolution of complaints filed by qualified persons with disabilities. The ADA Coordinator may also be a representative of the Department of Human Resource Management assigned to the Board.~~

~~[B-](2) "[The ADA State Coordinating Committee] Board" means [that committee with representatives designated by the directors of the following agencies:~~

- ~~\_\_\_\_\_ (1) Office of Planning and Budget;~~
- ~~\_\_\_\_\_ (2) Department of Human Resource Management;~~
- ~~\_\_\_\_\_ (3) Division of Risk Management;~~
- ~~\_\_\_\_\_ (4) Division of Facilities Construction Management; and~~
- ~~\_\_\_\_\_ (5) Office of Attorney General.]the Board of Pardons and Parole created by Utah Const. Art. 7, Section 12(1), and Utah Code Ann. Section 77-27-2(1).~~

~~[C-](3) "[Agency]Chairperson" [means the Board of Pardons and Parole.]as provided in Utah Code Ann. Subsection 77-27-4(1), means the Board's Chairperson.~~

~~[D-](4) "[Disability]Designee" means[, with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.]an individual appointed by the Board's Chairperson, or the Board's Vice-Chairperson, to investigate allegations of ADA non-compliance in the event the ADA Coordinator is unable or unwilling to conduct an investigation for any reason, including a conflict of interest. A designee does not have to be an employee of the Board; however, the designee must have a working knowledge of the responsibilities and obligations required of employers and employees by the ADA.~~

~~[E-](5) "[Major life activities]Disability" means, [functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.]with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.~~

~~[F-](6) "[Individual with a disability]Major life activities" [(hereafter individual) means a person who has a disability which limits one of his/her major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the Board, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.~~

~~G. "Board" means the Board of Pardons and Parole.~~

~~H. "Chairman" or "Chairman of the Board" means Chairman of the Board of Pardons and Parole.]include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, and working. A major life activity also includes the operation of major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.~~

~~(7) "Qualified Individual" means an individual who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Board. A "qualified individual" is also one who, with or without reasonable accommodation, can perform the essential functions of the employment position that individual holds or desires.~~

~~(8) "Vice-Chairperson," as provided in Utah Code Ann. Subsection 77-27-4(2), means the Board's Vice-Chairperson.~~

### **R671-102-3. Filing of Complaints.**

~~[A. A complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts; but no later than 60 days from the date of the alleged act of discrimination:~~

~~\_\_\_\_\_ B. The Complaint shall be filed with the Board's ADA Coordinator in writing or in another accessible format suitable to the individual:~~

~~\_\_\_\_\_ C. Each complaint shall:~~

- ~~\_\_\_\_\_ (1) include the individual's name and address;~~
- ~~\_\_\_\_\_ (2) include the nature and extent of the individual's disability;~~
- ~~\_\_\_\_\_ (3) describe the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation;~~
- ~~\_\_\_\_\_ (4) describe the action and accommodation desired; and~~
- ~~\_\_\_\_\_ (5) be signed by the individual or by his/her legal representative.](1) Any qualified individual may file a complaint alleging non-compliance with Title II of the Americans with Disabilities Act, as amended, or the federal regulations promulgated thereunder.~~

~~\_\_\_\_\_ (2) Qualified individuals shall file their complaints with the Board's ADA Coordinator, unless the complaint alleges that the ADA Coordinator was non-compliant, in which case qualified individuals shall file their complaints with the Board's designee.~~

~~\_\_\_\_\_ (3) Qualified individuals shall file their complaints within 90 days after the date of the alleged non-compliance to facilitate the prompt and effective consideration of pertinent facts and appropriate remedies; however, the Board's Chairperson has the discretion to direct that the grievance process be utilized to address legitimate complaints filed more than 90 days after alleged non-compliance.~~

~~\_\_\_\_\_ (4) Each complaint shall:~~

- ~~\_\_\_\_\_ (a) include the complainant's name and address;~~
- ~~\_\_\_\_\_ (b) include the nature and extent of the individual's disability;~~
- ~~\_\_\_\_\_ (c) describe the Board's alleged discriminatory action in sufficient detail to inform the Board of the nature and date of the alleged violation;~~
- ~~\_\_\_\_\_ (d) describe the action and accommodation desired; and~~
- ~~\_\_\_\_\_ (e) be signed by the complainant or by his legal representative.~~

~~[D-](5) Complaints filed on behalf of classes [ø]or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.~~

~~(6) If the complaint is not in writing, the ADA Coordinator or designee shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.~~

~~(7) By filing a complaint or a subsequent appeal, the complainant authorizes necessary parties to conduct a confidential review of all relevant information, including records classified as private or controlled under the Government Records Access and Management Act, Utah Code Ann. Subsection 63G-2-302(1)(b) and Section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. 2112(d)(3)(B) and (C), and relevant information otherwise protected by statute, rule, regulation, or other law.~~

**R671-102-4. Investigation of Complaints.**

~~[A:]~~(1) The ADA Coordinator ~~[shall conduct an investigation of each complaint received. The investigation]~~ or designee shall ~~[be conducted to]~~ investigate complaints to the extent necessary to assure all relevant facts are ~~[determined]~~ collected and documented. This may include gathering all information listed in ~~[Section 3 (C)]~~ Subsections R671-102-3(4) and (7) of this rule if it is not made available by the ~~[individual]~~ complainant.

~~[B:]~~(2) ~~[When conducting the investigation, the Coordinator may seek assistance from the Board's legal, human resource and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve:~~

~~\_\_\_\_\_ (1) an expenditure of funds which is not absorbable within the agency's budget and would require appropriation authority;~~

~~\_\_\_\_\_ (2) facility modifications which require an expenditure of funds which is not absorbable within the agency's budget and would require appropriation authority; or~~

~~\_\_\_\_\_ (3) reclassification or reallocation in grade; the Coordinator shall consult with the ADA State Coordinating Committee.]~~ The ADA Coordinator or designee may seek assistance from the Attorney General's staff, and the Board's human resource and budget staff in determining what action, if any, should be taken on the complaint. The ADA Coordinator or designee may also consult with the Vice-Chairperson in making a recommendation.

(3) The ADA Coordinator or designee shall consult with representatives from other state agencies that may be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any recommendation that would:

\_\_\_\_\_ (a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

\_\_\_\_\_ (b) require facility modifications; or

\_\_\_\_\_ (c) require reassignment to a different position.

**R671-102-5. [Issuance of] Recommendation and Decision.**

~~[A:]~~(1) Within 15 working days after receiving the complaint, the ADA Coordinator ~~or designee~~ shall ~~[issue a decision outlining in writing, or in another suitable format, stating]~~ recommend to the Board's Vice-Chairperson what action, if any, ~~[shall]~~ should be taken on the complaint. ~~The recommendation shall be in writing or in another accessible format suitable to the complainant.~~

~~[B:]~~(2) If the ~~ADA~~ Coordinator or designee is unable to ~~[reach a decision]~~ make a recommendation within the 15 working day period, ~~[he/she]~~ the complainant shall ~~[notify the individual]~~ be notified in writing or ~~[by]~~ in another ~~[suitable]~~ accessible format suitable to the complainant stating why the ~~[decision]~~ recommendation is ~~[being-]~~ delayed and what additional time is needed ~~[to reach a decision].~~

(3) The Board's Vice-Chairperson may confer with the ADA Coordinator or designee and the complainant and may accept or modify the recommendation to resolve the complaint. The Board's Vice-Chairperson shall render a decision within 15 working days after the Board's Vice-Chairperson's receipt of the

recommendation from the ADA Coordinator or designee. The Board's Vice-Chairperson shall take all reasonable steps to implement the decision. The Board's Vice-Chairperson's decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

**R671-102-6. Appeals.**

~~[A:]~~(1) The ~~[individual]~~ complainant may appeal the Board's Vice-Chairperson's decision ~~[of the ADA Coordinator by filing an appeal]~~ to the Board's Chairperson within ~~[five]~~ ten working days ~~[from]~~ after the complainant's receipt of the Vice Chairperson's decision.

~~[B:]~~(2) The appeal shall be ~~[filed-]~~ in writing ~~[with the Board's Chairman or a designee other than the Board's ADA Coordinator.]~~ or in another accessible format reasonably suited to the complainant's ability.

~~[C:]~~(3) The ~~[filing of an appeal shall be considered as authorization to the Chairman or designee, by the individual, to allow review of all information, including information classified as private or controlled.]~~ Board's Chairperson may name a designee to assist on the appeal. The ADA coordinator or his designee may not also be the Board's Chairperson's designee for the appeal.

~~[D:]~~(4) ~~[The]~~ In the appeal, the complainant shall describe in sufficient detail why the ~~[Coordinator's-]~~ decision ~~[is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.]~~ does not effectively address the complainant's needs.

~~[E:]~~(5) The Board's ~~[Chairman]~~ Chairperson or his designee shall review the ~~[factual findings]~~ ADA Coordinator's or his designee's recommendation, the Board's Vice-Chairperson's decision, and the points raised on appeal prior to reaching a decision. ~~[of the investigation and the individual's statement regarding the inappropriateness of the Coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making any decision that would involve:]~~ The Board's Chairperson may direct additional investigation as necessary. The Board's Chairperson shall consult with representatives from other state agencies that would be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any decision that would:

~~[(1)]~~(a) involve an expenditure of funds ~~beyond [which is not absorbable and would require appropriation authority;]~~ what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

~~[(2)]~~(b) require facility modifications; or ~~[which require an expenditure of funds which is not absorbable and would require appropriation authority; or]~~

~~[(3)]~~(c) require ~~[reclassification or reallocation in grade; the Chairman or designee shall also consult with the State ADA Coordinating Committee.]~~ reassignment to a different position.

~~[F:]~~(6) ~~[The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another suitable format to the individual.]~~ The Board's Chairperson shall issue a final decision within 15 working days after receiving the complainant's appeal. The decision shall be in writing, or in another

accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

~~[G-](7) If the Board's [Chairman]Chairperson [or designee] is unable to reach a final decision within the [ten]15 working day period, [he/she]the complainant shall [notify the individual]be notified in writing, or by another [suitable]accessible format suitable to the complainant, why the final decision is being delayed and the additional time needed to reach a final decision.~~

**R671-102-7. [Classification of Records.]Record Classification.**

~~[A.—]The record of each complaint and appeal, and all written records produced or received as part of such actions, shall be classified as protected as defined under Section 63G-2-305 until the ADA Coordinator, the Chairman or their designees issue the decision, at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63G-2-302 or controlled as defined in Section 63G-304. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the Coordinator, Chairman or designees shall be classified as public information.](1) Records created in administering this rule are classified as "protected" under Utah Code Ann. Subsections 63G-2-305(9), (22), (24), and (25).~~

~~(2) After issuing a decision under Section R671-102-5, or a final decision upon appeal under Section R671-102-6, portions of the record pertaining to the complainant's medical condition shall be classified as "private" under Utah Code Ann. Subsection 63G-2-302(1)(b), or "controlled" under Utah Code Ann. Section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4)(A), and (C) and 42 U.S.C. 12112(d)(3)(B) and (C), at the option of the ADA coordinator.~~

~~(a) The written decision of the Board's Vice-Chairperson or the Board's Chairperson shall be classified as "public," and all other records, except controlled records under Subsection R671-102-7(2), classified as "private."~~

**R671-102-8. Relationship to Other Laws.**

~~[A.—]This rule does not prohibit or limit the use of remedies available to individuals under:[—the State Anti-Discrimination Complaint Procedures Section 67-19-32; the Federal ADA Complaint Procedures (2002 Edition, beginning with Part 35.170); or any other Utah State or Federal law that provides equal or greater protection for the rights of individuals with disabilities.]~~

~~(a) the state Anti-Discrimination Complaint Procedures, Utah Code Ann. Section 34A-5-107 and Utah Code Ann. Section 67-19-32;~~

~~(b) the Federal ADA Complaint Procedures, 28 CFR 35.170 through 28 CFR 35.178; or~~

~~(c) any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.~~

**[R671-102-9. Interpreters:**

~~The Board will provide interpreters for the hearing-impaired.~~

**]KEY: disabilities**

**Date of Enactment or Last Substantive Amendment: [September 27, 2007]2011**

**Notice of Continuation: July 25, 2007**

**Authorizing, and Implemented or Interpreted Law: 67-19-32; 63G-2**

**Public Safety, Highway Patrol  
R714-600  
Performance Standards for Tow Truck  
Motor Carriers**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34895

FILED: 06/01/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of the proposed changes is to clean up language and clarify some definitions. In addition, the Utah Highway Patrol will coordinate tow rotation services and this amendment will reflect the change.

**SUMMARY OF THE RULE OR CHANGE:** The proposed changes in the rule will define a coordinator and tow truck. The rule change will establish the Utah Highway Patrol as the coordinating agency for the tow services. Each Utah Highway Patrol Section may designate a tow coordinator who will maintain the list and submit it to the local dispatch center. In addition, the changes will clarify definitions and clean up language in the rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 41-6a-1406 and Subsection 53-1-106(1)(a)(i)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This rule amendment clarifies a tow rotation and establishes the Utah Highway Patrol as the coordinating agency. This will task the Section Commander to coordinate the program but will not require extra funding.

◆ **LOCAL GOVERNMENTS:** This rule amendment clarifies a tow rotation and establishes the Utah Highway Patrol as the coordinating agency. This will task the Section Commander to coordinate the program but will not require extra funding.

◆ **SMALL BUSINESSES:** The tow services and rotation system has been in place and utilized for several years. The proposed changes will not impact those services or incur additions costs.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule amendment clarifies a tow rotation and establishes the Utah Highway Patrol as the coordinating agency. The amendment will task the Section Commander to establish

and coordinate the tow rotation program but will not require additional funding.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no additional costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After review of Rule R714-600 and its proposed amendments, it is my opinion that these amendments will not have a fiscal impact on the Utah Department of Public Safety or any other state or governmental agency. It will also not alter the fiscal impact to tow truck companies or individuals whose cars are removed from a highway or other place as directed by a sworn officer because the rule only memorializes procedures that are already in use.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Mike McKay by phone at 801-965-4481, by FAX at 801-965-4716, or by Internet E-mail at mmckay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Lance Davenport, Commissioner

#### **R714. Public Safety, Highway Patrol.**

#### **R714-600. Performance Standards for Tow Truck Motor Carriers.**

##### **R714-600-2. Purpose.**

The purpose of this rule is to establish procedures for ~~the designation and dispatch of~~ a tow truck ~~motor carriers~~ to be dispatched when a sworn officer requests the removal and towing of a motor vehicle.

##### **R714-600-3. Definitions.**

(1) Definitions used in the rule are found in Sections 41-6a-102, 53-10-102, 69-2-2, and 72-9-102.

(2) In addition:

(a) "department dispatch center" means a dispatch center which is operated or maintained by the department;

(b) "department dispatcher" means an employee of a dispatch center operated or maintained by the department whose primary duties are to receive calls for emergency police, fire, and medical services, and to dispatch the appropriate personnel and equipment in response to the calls;

(c) "dispatch center" means a facility which acts as a public safety answering point and provides emergency dispatch and communications support to sworn officers;

(d) "sworn officer" means a peace officer who is employed by the department; ~~and~~

(e) "tow truck" means a motor vehicle constructed, designed, altered, or equipped primarily for the purpose of towing or removing damaged, disabled, abandoned, seized, repossessed or impounded vehicles from highway or other place by means of a crane, hoist, tow bar, tow line, dolly tilt bed, or other similar means of vehicle transfer without its own power or control;

~~(e)~~(f) "tow truck motor carrier" means any company that provides for-hire, private, salvage, or repossession towing services and includes all of the company's agents, officers, representatives and employees; and

(g) "UHP" means the Department of Public Safety, Utah Highway Patrol.

#### **R714-600-4. Dispatch of a Tow Truck ~~Motor Carrier~~.**

(1) When a sworn officer determines that a vehicle must be ~~towed~~ removed from a highway or other place, the sworn officer shall contact the dispatch center which provides service for that area and request that a tow truck motor carrier be ~~dispatched~~ contacted so a tow truck can be dispatched.

(2) The sworn officer will provide the dispatch center with the location, make, model and license number of the vehicle that ~~must be towed~~ is to be removed.

(3) ~~The~~ If the dispatch center is operated or maintained by the department, the dispatch center shall determine which tow truck motor carrier to ~~dispatch~~ contact according to the ~~policies and practices of that particular dispatch center~~ this rule.

(4) Nothing in this rule precludes the owner of a vehicle from contacting a tow truck motor carrier directly to ~~remove~~ make arrangements for the removal of the vehicle.

#### **R714-600-5. ~~Designation of Tow Truck Motor Carriers by the Department~~ The Creation and Maintenance of a Towing Rotation List.**

~~(1) Each department dispatch center will maintain a call out list of tow truck motor carriers in the area who are certified according to the requirements found in Title 72, Chapter 9, Part 6, and R909-19.~~ (1)(a) The UHP may assign a coordinator in each section office to create and maintain a towing rotation list of approved tow truck motor carriers in the area.

(b) If a towing rotation list is created, the coordinator shall be responsible for providing a copy of the current towing rotation list to the dispatch center that provides dispatch services for the area.

(2)(a) In order to be considered for inclusion on a UHP towing rotation list in a particular area, a tow truck motor carrier shall complete a UHP Towing Rotation Application and Agreement and submit it to the coordinator who is responsible for that area.

(b) A tow truck motor carrier shall complete a new UHP Towing Rotation Application and Agreement on or before July 1<sup>st</sup> of each year.

(c) A truck motor carrier may be included on the towing rotation list, if it meets the requirements described in the UHP Towing Rotation Application and Agreement.

~~[(2)](3)~~ The ~~[call-out list of tow truck motor carriers]~~ towing rotation list will contain the following information on each tow truck motor carrier:

- (i) the business name and phone number of the tow truck motor carrier;
- (ii) the names and phone numbers of all tow truck operators;
- (iii) after-hours contact information for the tow truck motor carrier; and
- (iv) whether the tow truck motor carrier has the ability to perform any special services.

~~[(3)](4)~~ A tow truck motor carrier must notify the ~~[department dispatch center]~~ coordinator if the tow truck motor carrier is out of service or ~~[not available]~~ unavailable so the ~~[department dispatch center may temporarily remove the]~~ tow truck motor carrier may be temporarily removed from the ~~[call-off list]~~ towing rotation list.

~~[(4)](5)(a)~~ A ~~[department dispatch center may permanently remove a]~~ tow truck motor carrier may be permanently removed from the ~~[call-out list]~~ towing rotation list, after notice and an opportunity to respond to the allegations, if any of the following occur:

- (i) a tow truck motor carrier ~~[is no longer certified]~~ fails to comply with any of the requirements found in Title 72, Chapter 9, Part 6, of the Utah Code or R909-19 and R873-22M-17 of the Utah Administrative Code;
- (ii) a tow truck motor carrier is operating in violation of the law or has engaged in practices which are a violation of law;
- (iii) a tow truck motor carrier's continued unavailability disrupts the operation of a department dispatch center;
- (iv) a tow truck motor carrier routinely fails to respond to requests for service in a timely manner; ~~[or]~~
- (v) a tow truck motor carrier refuses to retrieve abandoned vehicles; or
- (vi) a tow truck motor carrier violates any of the terms and conditions contained in the UHP Towing Rotation Application and Agreement.

#### **R714-600-6. Dispatch of Tow Truck Motor Carriers by the Department.**

(1)(a) When a sworn officer contacts a department dispatch center and requests that a tow truck motor carrier be dispatched, a department dispatcher will immediately contact a tow truck motor carrier on the ~~[call-out list]~~ towing rotation list provided by the coordinator for that area.

(b) Department dispatchers will contact tow truck motor carriers in the order they appear on the ~~[call-out list]~~ towing rotation list.

(2) Department dispatchers will provide the tow truck motor carrier with information regarding the nature of the call so the tow truck motor carrier may determine if the tow truck motor carrier is able to handle the call.

(3)(a) If a tow truck motor carrier fails to respond when contacted by a department dispatcher or the tow truck motor carrier is unable to respond to the call, the department dispatcher will contact the next tow truck motor carrier on the ~~[call-out list]~~ towing rotation list.

(b) A tow truck motor carrier who fails to respond or who is unable to respond to a call, will not be contacted by a department

dispatcher until the next time that the tow truck motor carrier's name appears on the ~~[call-out list]~~ towing rotation list.

(4)(a) If a department dispatcher contacts a tow truck motor carrier who is available but is not equipped for the specific type of service requested, the department dispatcher will continue to contact tow truck motor carriers on the ~~[call-out list]~~ towing rotation list until a tow truck motor carrier is found who is equipped to handle the request for service.

(b) A tow truck motor carrier's inability to provide requested services for lack of equipment, does not affect the tow truck motor carrier's place on the ~~[call-out list]~~ towing rotation list.

(5) If a tow truck motor carrier responds to a call from dispatch but tow services are later determined not to be necessary, the tow truck motor carrier will be contacted the next time that tow services are needed.

(6) If a tow truck motor carrier responds to a department dispatcher's request for service and arrives at the location specified by the sworn officer, the tow truck motor carrier must provide the requested services unless the tow truck motor carrier is mechanically unable to do so.

(7) The performance of tow services that are not at the request of a department dispatcher will not affect the tow truck motor carrier's place on the ~~[call-out list]~~ towing rotation list.

(8)(a) Each department dispatch center shall maintain a log of all of the requests for service made to certified tow truck motor carriers.

(b) The log of requests for service shall contain the following information:

- (i) the date and time of the call for service;
- (ii) the officer requesting service;
- (iii) the reason for the request;
- (iv) the description of the vehicle, including the license plate number;
- (v) the location of the vehicle;
- (vi) the certified tow truck motor carrier contacted;
- (vii) whether the tow truck motor carrier responded to the request for service; and
- (viii) the department dispatcher's initials and any remarks.

**KEY: towing, motor carrier, law enforcement**

**Date of Enactment or Last Substantive Amendment: [January 24,] 2011**

**Notice of Continuation: August 3, 2009**

**Authorizing, and Implemented or Interpreted Law: 41-6a-1406; 53-1-106(1)(a)(i)**

**Tax Commission, Auditing  
R865-4D-3  
User-Dealer's License Pursuant to Utah  
Code Ann. Section 59-13-302**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34870

FILED: 05/26/2011

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The section is obsolete.

SUMMARY OF THE RULE OR CHANGE: The section is removed since it is obsolete. Under statute, all special fuel is taxed at the refinery level. There are no longer provisions in statute allowing for special fuel to be taxed at the bulk plant level.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-13-302

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--The provisions of the section currently have no effect.
- ◆ LOCAL GOVERNMENTS: None--The provisions of the section currently have no effect.
- ◆ SMALL BUSINESSES: None--The provisions of the section currently have no effect.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--The provisions of the section currently have no effect.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The provisions of this section are obsolete. As such, they have not been effective for some years.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The provisions of this section are obsolete. As such, they have not been effective for some years.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at [cj@utah.gov](mailto:cj@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

**R865. Tax Commission, Auditing.**

~~[R865-4D. Special Fuel Tax.~~

~~R865-4D-3. User-Dealer's License Pursuant to Utah Code Ann. Section 59-13-302.~~

~~A. Prior to any sale or use of special fuel in this state each user-dealer shall apply for and obtain a special fuel user-dealer's license for each bulk plant or service station from which such special fuel is to be sold or used. Application for a special user-dealer's license shall be made on a form provided by the Tax Commission. Under the law the Tax Commission may require a user-dealer to furnish a bond. Upon receipt and approval of the application, the commission will issue the license. A special fuel user-dealer's license is valid only for the user-dealer in whose name issued and for the specific bulk plant or service station named on the license. The license shall remain in force and effect unless the holder of the license ceases to act as a user-dealer, or the Tax Commission for reasonable cause terminates the license at an earlier date.~~

~~B. Upon sale or discontinuance of the sale or distribution of special fuel as defined in this rule from a bulk plant or service station for which a license has been issued, the user-dealer shall return for cancellation the license issued for the bulk plant or service station.~~

**]KEY: taxation, fuel, special fuel**

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

~~[September 21, 2009]2011~~

**Notice of Continuation: February 26, 2007**

**Authorizing, and Implemented or Interpreted Law: 59-13-102; 59-13-301; 59-13-302; 59-13-303; 59-13-304; 59-13-305; 59-13-307; 59-13-312; 59-13-313; 59-13-501**

**Tax Commission, Auditing**

**R865-6F-23**

**Utah Steam Coal Tax Credit Pursuant to Utah Code Ann. Section 59-7-604**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34871

FILED: 05/26/2011

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The section is obsolete.

SUMMARY OF THE RULE OR CHANGE: The section is removed since it is obsolete. There is no longer a Utah steam coal tax credit in statute.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-7-604

## ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--The provisions of the section currently have no effect.
- ◆ LOCAL GOVERNMENTS: None--The provisions of the section currently have no effect.
- ◆ SMALL BUSINESSES: None--The provisions of the section currently have no effect.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--The provisions of the section currently have no effect.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The provisions of this section are obsolete. As such, they have not been effective for some years.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The provisions of this section are obsolete. As such, they have not been effective for some years.

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

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

## DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at [cj@utah.gov](mailto:cj@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

**R865. Tax Commission, Auditing.****R865-6F. Franchise Tax.****[R865-6F-23. Utah Steam Coal Tax Credit Pursuant to Utah Code Ann. Section 59-7-604.**~~\_\_\_\_\_ A. Definitions:~~

~~\_\_\_\_\_ 1. "Permitted mine" means a mine for which a permit has been issued by the Division of Oil, Gas, and Mining pursuant to Title 40, Chapter 10, Coal Mining and Reclamation.~~

~~\_\_\_\_\_ 2. "Purchaser outside of the United States" means any company that purchases coal for shipment outside of the fifty states or the District of Columbia.~~

~~\_\_\_\_\_ B. To qualify for the steam coal tax credit for taxable years beginning on or after January 1, 1993, sales to a purchaser outside of the United States must exceed the permitted mine's sales to a purchaser outside of the United States in the taxable year beginning on or after January 1, 1992, regardless of any change in ownership of the mine.~~

~~\_\_\_\_\_ C. To qualify for the steam coal tax credit the coal must be exported outside of the United States, within a reasonable period of time. A reasonable period of time is considered to be within 90 days after the end of the tax year.~~

**]KEY: taxation, franchises, historic preservation, trucking industries**

**Date of Enactment or Last Substantive Amendment: [December 15, 2010]2011**

**Notice of Continuation: March 8, 2007**

**Authorizing, and Implemented or Interpreted Law: 9-2-401[;] through[;] 9-2-415; 16-10a-1501[;] through[;] 16-10a-1533; 53B-8a-112; 59-1-1301 through 59-1-1309; 59-6-102; 59-7; 59-7- 101; 59-7-102; 59-7-104[;] through[;] 59-7-106; 59-7-108; 59-7-109; 59-7-110; 59-7-112; 59-7-302[;] through[;] 59-7-321; 59-7-402; 59-7-403; 59-7-501; 59-7-502; 59-7-505; 59-7-601[;] through[;] 59-7-614; 59-7-608; 59-7-701; 59-7-703; 59-10-603; 59-13-202; 59-13-301; 63M-1; 63M-1-401 through 63M-1-416**

**Tax Commission, Auditing**  
**R865-13G-16**  
**Aviation Fuel Tax Refund or Credit**  
**Pursuant to Utah Code Ann. Section**  
**59-13-404**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34872

FILED: 05/26/2011

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The section is obsolete.

SUMMARY OF THE RULE OR CHANGE: The section is removed since it is obsolete. The provisions of this section currently have no effect.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-13-404

## ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--The provisions of this section currently have no effect.
- ◆ LOCAL GOVERNMENTS: None--The provisions of this section currently have no effect.
- ◆ SMALL BUSINESSES: None--The provisions of this section currently have no effect.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--The provisions of this section currently have no effect.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The provisions of this section are obsolete. As such, they have not been effective for some years.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The provisions of this section are obsolete. As such, they have not been effective for some years.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at [cj@utah.gov](mailto:cj@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

**R865. Tax Commission, Auditing.**

**R865-13G. Motor Fuel Tax.**

~~[R865-13G-16. Aviation Fuel Tax Refund or Credit Pursuant to Utah Code Ann. Section 59-13-404.~~

~~For purposes of administering the aviation fuel tax refund or credit for aviation fuel tax paid on gallons of aviation fuel purchased at Salt Lake International Airport, "tax year" means calendar year.~~

**]KEY: taxation, motor fuel, gasoline, environment**

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

~~[September 14, 2004]2011~~

**Notice of Continuation:** March 9, 2007

**Authorizing, and Implemented or Interpreted Law:** 59-13-201; 59-13-202; 59-13-203.1; 59-13-204; 59-13-208; 59-13-210; 59-13-404

Tax Commission, Auditing  
**R865-19S-42**  
Sales to The State of Utah and Its  
Subdivisions Pursuant to Utah Code  
Ann. Section 59-12-104

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34882

FILED: 05/26/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Section 59-12-104.6 requires the sales tax exemption for state and local government lodging related purchases be granted in the form of a refund of sales tax paid and authorizes the commission to promulgate rules providing procedures for those refunds.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendment indicates the procedures a state or local government must follow to receive a refund of sales tax paid on lodging related purchases that are exempt from sales tax, including the records the state or local government must retain.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-12-104.6

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** Any fiscal impact was considered in H.B. 82 (2011 General Session). (DAR NOTE: H.B. 82 (2011) will be effective 07/01/2011.)

♦ **LOCAL GOVERNMENTS:** Any fiscal impact was considered in H.B. 82 (2011).

♦ **SMALL BUSINESSES:** Any fiscal impact was considered in H.B. 82 (2011).

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Any fiscal impact was considered in H.B. 82 (2011).

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** When H.B. 82 (2011) becomes effective, 07/01/2011, state and local government entities that qualify for a sales tax exemption on their lodging-related purchases will no longer receive the sales tax exemption at the point of sale, but must pay the sales tax up front on the purchases and apply to the Tax Commission for a refund of the tax.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** When H.B. 82 (2011) becomes effective, 07/01/2011, state and local government entities that qualify for a sales tax exemption on their lodging-related purchases will no longer receive the sales tax exemption at the point of sale, but must pay the sales tax up front on the purchases and apply to the Tax Commission for a refund of the tax.

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

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

## DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

**R865. Tax Commission, Auditing.****R865-19S. Sales and Use Tax.**

**R865-19S-42. ~~[Sales to The]~~Purchases by the State of Utah, Its Institutions, and Its Political Subdivisions Pursuant to Utah Code Ann. ~~[Section]~~Sections 59-12-104 and 59-12-104.6.**

(1) "Lodging related purchase" is as defined in Section 59-12-104.6.

~~[A-]~~(2) ~~[Sales]~~A purchase made ~~[to]~~by the state~~[of Utah]~~, its ~~[departments and]~~institutions, or ~~[to]~~its political subdivisions such as counties, municipalities, school districts, drainage districts, irrigation districts, and metropolitan water districts ~~[are]~~is exempt from tax if the purchase is for use in the exercise of an essential governmental function.

~~[B-]~~(3) A ~~[sale]~~purchase is considered made ~~[to]~~by the state, its ~~[departments and]~~institutions, or ~~[to]~~its political subdivisions if the purchase is paid for directly by the purchasing state or local entity. If an employee of a state or local entity pays for a purchase with ~~[his]~~the employee's own funds and is reimbursed by the state or local entity, that ~~[sale]~~purchase is not made ~~[to]~~by the state or local entity and does not qualify for the exemption.

(4) An entity that qualifies under Subsections (2) and (3) for an exemption from sales and sales-related tax on a lodging related purchase:

(a) may not receive that exemption at the point of sale; and

(b) may apply for a refund of tax paid on forms provided by the commission.

(5) An entity that applies for a refund of sales and sales-related tax paid under Subsection (4)(b) shall:

(a) retain a copy of a receipt or invoice indicating:

(i) the amount of sales and sales-related tax paid for each purchase for which a refund of tax paid is claimed; and

(ii) the purchase was paid for directly by the entity; and

(b) maintain original records supporting the refund request for three years following the date of the refund and provide those records to the commission upon request.

~~[C. Vendors making exempt sales to the state, its departments and institutions, or to its political subdivisions are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23.~~

]

**KEY: charities, tax exemptions, religious activities, sales tax**

**Date of Enactment or Last Substantive Amendment: [January 27,] 2011**

**Notice of Continuation: March 13, 2007**

**Authorizing, and Implemented or Interpreted Law: 9-2-1702; 9-2-1703; 10-1-303; 10-1-306; 10-1-307; 10-1-405; 19-6-808; 26-32a-101 through 26-32a-113; 59-1-210; 59-12; 59-12-102; 59-12-103; 59-12-104; 59-12-105; 59-12-106; 59-12-107; 59-12-108; 59-12-118; 59-12-301; 59-12-352; 59-12-353**

**Tax Commission, Auditing**  
**R865-20T-5**  
**Bonding Requirements For Tobacco-Products Dealers Pursuant to Utah Code Ann. Section 59-14-301**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34873

FILED: 05/26/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed amendment provides guidance on bonds required for sellers of cigarettes and tobacco products.

**SUMMARY OF THE RULE OR CHANGE:** The commission is considering two alternative amendments to this section. This first version of the proposed amendment indicates that the amount of a bond required for an applicant or a licensee to sell cigarettes or tobacco products is based on the applicant's or licensee's estimated tax liability and delinquencies. In addition, the amendment provides that a licensee may not purchase cigarette stamps that exceed 90% of the bond the licensee has filed with the commission. Finally, the amendment authorizes the commission to increase the bond amount if the commission believes an increase is necessary to ensure compliance with the law. (DAR NOTE: The second version of the proposed change to Section R865-20T-5 is under DAR No. 34874 in this issue, June 15, 2011, of the Bulletin.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-14-210 and Section 59-14-301

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** None--The amendment indicates how the commission will calculate the amount of the required bond.

♦ **LOCAL GOVERNMENTS:** None--The amendment indicates how the commission will calculate the amount of the required bond.

♦ **SMALL BUSINESSES:** None--The amendment indicates how the commission will calculate the amount of the required bond.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Minimal increase, some sellers may be required to obtain additional bonding.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Some sellers may be required to obtain additional bonding.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Some sellers may be required to obtain additional bonding.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 TAX COMMISSION  
 AUDITING  
 210 N 1950 W  
 SALT LAKE CITY, UT 84134  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

**R865. Tax Commission, Auditing.**  
**R865-20T. Tobacco Tax.**  
**R865-20T-5. Bonding Requirements For Cigarette and Tobacco[-] Products Dealers Pursuant to Utah Code Ann. [Section]Sections 59-14-210 and 59-14-301.**

[A-](1) Dealers [selling]who only sell tobacco products upon which the taxes imposed by this act have been paid by a previous seller are not required to post a bond.

(2) Subject to Subsections (3) and (4), the commission shall calculate the amount of a bond required under Title 59, Chapter 14, Cigarette and Tobacco Tax and Licensing ("Chapter 14"), on the basis of:

- (a) for an applicant:
  - (i) commission estimates of the applicant's tax liability under Chapter 14; and
  - (ii) the amount of a tax owed under Chapter 14 by any of the following:
    - (A) the applicant;
    - (B) a fiduciary of the applicant; and
    - (C) a person for which the applicant is required to collect, truthfully account for, and pay over a tax under Chapter 14; and
  - (b) for a licensee:
    - (i) commission estimates of the licensee's tax liability under Chapter 14; and
    - (ii) the amount of a tax owed under Chapter 14 by any of the following:

- (A) the licensee;
- (B) a fiduciary of the licensee; and
- (C) a person for which the licensee is required to collect, truthfully account for, and pay over a tax under Chapter 14.
- (3) If the commission determines it is necessary to ensure compliance with Chapter 14, the commission may require a licensee to increase the amount of a bond filed with the commission.
- (4) A licensee that does not purchase cigarette stamps on credit may not make any single purchase of cigarette stamps that exceeds 90% of the amount of the bond the licensee has filed with the commission.

**KEY: taxation, tobacco products**  
**Date of Enactment or Last Substantive Amendment: [~~August 12, 2010~~2011]**  
**Notice of Continuation: March 19, 2007**  
**Authorizing, and Implemented or Interpreted Law: 59-14-102; 59-14-202; 59-14-203.5; 59-14-204[;] through[;] 59-14-206; ~~59-14-210~~; 59-14-212; 59-14-301[;] through[;] 59-14-303; 59-14-401; 59-[ ]14-404; 59-14-603; 59-14-607**

**Tax Commission, Auditing**  
**R865-20T-5**  
**Bonding Requirements For Tobacco-Products Dealers Pursuant to Utah Code Ann. Section 59-14-301**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 34874  
 FILED: 05/26/2011

**RULE ANALYSIS**  
 PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment provides guidance on bonds required for sellers of cigarettes and tobacco products.

SUMMARY OF THE RULE OR CHANGE: The commission is considering two alternative amendments to this section. This second version includes the following amendments that appear in the first alternative, that is, indicating that the amount of a bond required for an applicant or a licensee to sell cigarettes or tobacco products is based on the applicant's or licensee's estimated tax liability and delinquencies, as well as authorizing the commission to increase the bond amount if the commission believes an increase is necessary to ensure compliance with the law. This second version of the amendments does not include the amendments that provide that a licensee may not purchase cigarette stamps that exceed 90% of the bond the licensee has filed with the commission. (DAR NOTE: The first version of the proposed

change to Section R865-20T-5 is under DAR No. 34873 in this issue, June 15, 2011, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-14-210 and Section 59-14-301

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: None--The amendment indicates how the commission will calculate the amount of the required bond.

♦ LOCAL GOVERNMENTS: None--The amendment indicates how the commission will calculate the amount of the required bond.

♦ SMALL BUSINESSES: None--The amendment indicates how the commission will calculate the amount of the required bond.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Some seller may be required to obtain additional bonding.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Some sellers may be required to obtain additional bonding.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Some sellers may be required to obtain additional bonding.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

**R865. Tax Commission, Auditing.**

**R865-20T. Tobacco Tax.**

**R865-20T-5. Bonding Requirements For Cigarette and Tobacco[-] Products Pursuant to Utah Code Ann. [Section] Sections 59-14-210 and 59-14-301.**

[A-](1) Dealers [selling]who only sell tobacco products upon which the taxes imposed by this act have been paid by a previous seller are not required to post a bond.

(2) Subject to Subsections (3) and (4), the commission shall calculate the amount of a bond required under Title 59,

Chapter 14, Cigarette and Tobacco Tax and Licensing ("Chapter 14"), on the basis of:

(a) for an applicant:

(i) commission estimates of the applicant's tax liability under Chapter 14; and

(ii) the amount of a tax owed under Chapter 14 by any of the following:

(A) the applicant;

(B) a fiduciary of the applicant; and

(C) a person for which the applicant is required to collect, truthfully account for, and pay over a tax under Chapter 14; and

(b) for a licensee:

(i) commission estimates of the licensee's tax liability under Chapter 14; and

(ii) the amount of a tax owed under Chapter 14 by any of the following:

(A) the licensee;

(B) a fiduciary of the licensee; and

(C) a person for which the licensee is required to collect, truthfully account for, and pay over a tax under Chapter 14.

(3) If the commission determines it is necessary to ensure compliance with Chapter 14, the commission may require a licensee to increase the amount of a bond filed with the commission.

**KEY: taxation, tobacco products**

**Date of Enactment or Last Substantive Amendment: [~~August 12, 2010~~2011]**

**Notice of Continuation: March 19, 2007**

**Authorizing, and Implemented or Interpreted Law: 59-14-102; 59-14-202; 59-14-203.5; 59-14-204[;] through[;] 59-14-206; 59-14-210; 59-14-212; 59-14-301[;] through[;] 59-14-303; 59-14-401; 59-14-404; 59-14-603; 59-14-607**

**Tax Commission, Auditing**  
**R865-20T-6**  
**Purchase of Cigarette Stamps**  
**Pursuant to Utah Code Ann. Section**  
**59-14-206**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34876

FILED: 05/26/2011

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The section is unnecessary.

SUMMARY OF THE RULE OR CHANGE: The section is removed since it is unnecessary and its procedures are outdated.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-14-206

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** None--The section is removed since it is unnecessary and its procedures are outdated.
- ◆ **LOCAL GOVERNMENTS:** None--The section is removed since it is unnecessary and its procedures are outdated.
- ◆ **SMALL BUSINESSES:** None--The section is removed since it is unnecessary and its procedures are outdated.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--The section is removed since it is unnecessary and its procedures are outdated.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--The section is removed since it is unnecessary and its procedures are outdated.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** None--The section is removed since it is unnecessary and its procedures are outdated.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at [cj@utah.gov](mailto:cj@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

**R865. Tax Commission, Auditing.**

**R865-20T. Tobacco Tax.**

~~**[R865-20T-6. Purchase of Cigarette Stamps Pursuant to Utah Code Ann. Section 59-14-206.**~~

~~(1) Cigarette revenue stamps are sold only to licensed and bonded dealers, except in cases where confiscated merchandise is sold to a person who does not intend to resell the merchandise but purchases it for consumption or use.~~

~~(2) Stamps may be delivered to a licensee on credit, provided that the following two conditions are met:~~

~~(a) A written request is made naming the person to whom the stamps are to be delivered, and identifying that person by means of signature, and including the address to which the stamps should be delivered.~~

~~(b) Only a responsible person of mature age is designated as the agent to whom the stamps are delivered.~~

~~(3) In addition to satisfying the conditions of Subsection (2), the licensee shall also comply with Subsection (3)(a), (3)(b), or (3)(c), whichever is appropriate.~~

~~(a) In the case of individual ownership, the request for stamps shall be signed by the licensee in the same manner that the signature appears on the licensee's bond.~~

~~(b) In the case of a partnership, the request shall be signed by a partner whose signature appears on the bond.~~

~~(c) In the case of a corporation, the request shall be signed by a duly authorized officer of the corporation.~~

**]KEY: taxation, tobacco products**

**Date of Enactment or Last Substantive Amendment:** ~~[August 12, 2010]~~**2011**

**Notice of Continuation:** March 19, 2007

**Authorizing, and Implemented or Interpreted Law:** 59-14-102; 59-14-202; 59-14-203.5; 59-14-204[;] through[;] 59-14-206; 59-14-212; 59-14-301[;] through[;] 59-14-303; 59-14-401; 59-[-]14-404; 59-14-603; 59-14-607

**Tax Commission, Auditing**  
**R865-20T-13**  
**Calculation of Tax on Moist Snuff**  
**Pursuant to Utah Code Ann. Section**  
**59-14-302**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34869

FILED: 05/26/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed amendment updates outdated language.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendment replaces an outdated tax rate for moist snuff with the statutory reference for the correct tax rate.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-14-302

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** None--The amendment updates the reference to the correct tax rate.
- ◆ **LOCAL GOVERNMENTS:** None--The amendment updates the reference to the correct tax rate.
- ◆ **SMALL BUSINESSES:** None--The amendment updates the reference to the correct tax rate.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--The amendment updates the reference to the correct tax rate.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The amendment updates the reference to the correct tax rate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The amendment updates the reference to the correct tax rate.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at [cj@utah.gov](mailto:cj@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

#### **R865. Tax Commission, Auditing.**

##### **R865-20T. Tobacco Tax.**

##### **R865-20T-13. Calculation of Tax on Moist Snuff Pursuant to Utah Code Ann. Section 59-14-302.**

(1) Moisture content, for purposes of ascertaining whether a tobacco product meets the definition of moist snuff, shall be the moisture content annually reported by the manufacturer to the United States Department of Health and Human Services.

(2)(a) Tax on moist snuff shall be calculated by multiplying the net weight as listed by the manufacturer, in ounces, of the taxable moist snuff by ~~[\$1.83]~~ the tax rate for moist snuff required under Section 59-14-302.

(b) If the net weight includes a fractional part of an ounce, that fractional part of an ounce shall be included in the calculation.

(3) The calculation described in Subsection (2) shall be carried to three decimal places and rounded up to the nearest cent whenever the third decimal place of the calculation in Subsection (2) is greater than 4.

#### **KEY: taxation, tobacco products**

**Date of Enactment or Last Substantive Amendment:** ~~[August 12, 2010]~~ **2011**

**Notice of Continuation:** March 19, 2007

**Authorizing, and Implemented or Interpreted Law:** 59-14-102; 59-14-202; 59-14-203.5; 59-14-204[;] through[;] 59-14-206; 59-14-212; 59-14-301[;] through[;] 59-14-303; 59-14-401; 59-14-404; 59-14-603; 59-14-607

## Tax Commission, Motor Vehicle **R873-22M-31** Determination of Special Interest Vehicle Pursuant to Utah Code Ann. Section 41-1a-102

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34877

FILED: 05/26/2011

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The section is unnecessary.

SUMMARY OF THE RULE OR CHANGE: The section is removed since it is unnecessary. The provisions of this section are adequately covered in statute.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-1a-102

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: None--The provisions of the section are covered in statute.

◆ LOCAL GOVERNMENTS: None--The provisions of the section are covered in statute.

◆ SMALL BUSINESSES: None--The provisions of the section are covered in statute.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--The provisions of the section are covered in statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The provisions of the section are covered in statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The provisions of the section are covered in statute.

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

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

## DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

**R873. Tax Commission, Motor Vehicle.****R873-22M. Motor Vehicle.****~~[R873-22M-31. Determination of Special Interest Vehicle Pursuant to Utah Code Ann. Section 41-1a-102.~~**

~~A. The division shall maintain a list of all vehicles currently eligible for classification as special interest vehicles.~~

~~1. A request for the classification of a vehicle as a special interest vehicle shall be approved if the vehicle is on the list.~~

~~2. If a vehicle not on the list qualifies for classification as a special interest vehicle pursuant to Section 41-1a-102, the division director shall add that vehicle to the list.~~

**[KEY: taxation, motor vehicles, aircraft, license plates**

**Date of Enactment or Last Substantive Amendment: ~~[December 22, 2009]~~2011**

**Notice of Continuation: March 12, 2007**

**Authorizing, and Implemented or Interpreted Law: 41-1a-102; 41-1a-104; 41-1a-108; 41-1a-116; 41-1a-211; 41-1a-215; 41-1a-214; 41-1a-401; 41-1a-402; 41-1a-411; 41-1a-413; 41-1a-414; 41-1a-416; 41-1a-418; 41-1a-419; 41-1a-420; 41-1a-421; 41-1a-422; 41-1a-522; 41-1a-701; 41-1a-1001; 41-1a-1002; 41-1a-1004; 41-1a-1005; 41-1a-1009[;] through[;] 41-1a-1011; 41-1a-1101; 41-1a-1209; 41-1a-1211; 41-1a-1220; 41-6-44; 53-8-205; 59-12-104; 59-2-103; 72-10-109 through 72-10-112; 72-10-102**

## Tax Commission, Motor Vehicle

**R873-22M-37**

## Standard Issue License Plates

Pursuant to Utah Code Ann. Sections  
41-1a-402 and 41-1a-1211**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34878

FILED: 05/26/2011

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The section is obsolete.

SUMMARY OF THE RULE OR CHANGE: The section is removed since it is obsolete. Under the current practice, the Motor Vehicle Division always requests the applicant for a license plate to indicate which of the two available standard issue license plates the applicant would like.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-1a-1211 and Section 41-1a-402

## ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: None--The provisions of the section are obsolete.

♦ LOCAL GOVERNMENTS: None--The provisions of the section are obsolete.

♦ SMALL BUSINESSES: None--The provisions of the section are obsolete.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--The provisions of the section are obsolete.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The provisions of the section no longer reflect the practice of the Motor Vehicle Division.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The provisions of the section no longer reflect the practice of the Motor Vehicle Division.

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

TAX COMMISSION

MOTOR VEHICLE

210 N 1950 W

SALT LAKE CITY, UT 84134

or at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

**R873. Tax Commission, Motor Vehicle.****R873-22M. Motor Vehicle.****~~[R873-22M-37. Standard Issue License Plates Pursuant to Utah Code Ann. Sections 41-1a-402 and 41-1a-1211.~~**

~~A. In the absence of a designation of one of the standard issue license plates at the time of the license plate transaction, the license plate provided shall be the statehood centennial license plate.~~

~~B. Any exchange of one type of standard issue license plate for the other type of standard issue license plate shall be subject to the plate replacement fee provided in Section 41-1a-1211.~~

**]KEY: taxation, motor vehicles, aircraft, license plates**

**Date of Enactment or Last Substantive Amendment:**  
~~[December 22, 2009]~~2011

**Notice of Continuation:** March 12, 2007

**Authorizing, and Implemented or Interpreted Law:** 41-1a-102; 41-1a-104; 41-1a-108; 41-1a-116; 41-1a-211; 41-1a-215; 41-1a-214; 41-1a-401; 41-1a-402; 41-1a-411; 41-1a-413; 41-1a-414; 41-1a-416; 41-1a-418; 41-1a-419; 41-1a-420; 41-1a-421; 41-1a-422; 41-1a-522; 41-1a-701; 41-1a-1001; 41-1a-1002; 41-1a-1004; 41-1a-1005; 41-1a-1009[;] through[;] 41-1a-1011; 41-1a-1101; 41-1a-1209; 41-1a-1211; 41-1a-1220; 41-6-44; 53-8-205; 59-12-104; 59-2-103; 72-10-109 through 72-10-112; 72-10-102

## Tax Commission, Property Tax **R884-24P-8**

### Security for Property Tax on Uranium and Vanadium Mines Pursuant to Utah Code Ann. Section 59-2-211

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34879

FILED: 05/26/2011

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The section is unnecessary.

**SUMMARY OF THE RULE OR CHANGE:** The section is removed since it is unnecessary. The Property Tax Division has never enforced the procedures in this rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-2-211

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** None--Property tax revenues are local revenues.
- ◆ **LOCAL GOVERNMENTS:** None--Property tax revenues are local revenues.
- ◆ **SMALL BUSINESSES:** None--Property tax revenues are local revenues.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Property tax revenues are local revenues.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--The provisions of the section have never been enforced.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** None--The provisions of the section have never been enforced.

**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:**

◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at [cj@utah.gov](mailto:cj@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011**

**THIS RULE MAY BECOME EFFECTIVE ON:** 07/22/2011

**AUTHORIZED BY:** Michael Cragun, Tax Commissioner

**R884. Tax Commission, Property Tax.**

**R884-24P. Property Tax.**

~~[R884-24P-8. Security for Property Tax on Uranium and Vanadium Mines Pursuant to Utah Code Ann. Section 59-2-211.~~

~~A. The security deposit allowed by Section 59-2-211 shall be requested from the mine owners or operators by giving notice in the manner required by Section 59-2-211. A list of mine owners and operators who have made lump sum security deposits with the Tax Commission will be furnished annually by the Tax Commission to any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah.~~

~~B. At the option of the mine owner or operator, within 30 days after receiving proper notice from the Tax Commission, or if the mine owner or operator has not complied with the request within the 30 day period, the Tax Commission may implement the following procedure:~~

~~1. Any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah shall withhold 4 percent, or any higher amount set by the Tax Commission, of the gross proceeds due to the mine operator or owner.~~

~~2. All amounts withheld shall be remitted to the Tax Commission by the last day of April, July, October, and January for the immediately preceding calendar quarter, in the manner set forth by the Tax Commission.~~

~~3. Not later than the last day of February, owners or operators of uranium and vanadium mines who have not made lump sum security deposits with the Tax Commission shall be provided with a statement from the Tax Commission showing all security deposit amounts withheld from their gross proceeds during the previous calendar year.~~

~~4. The Tax Commission shall provide the county treasurers with a list of all uranium and vanadium mine owners and operators who have had security deposit amounts withheld. The county treasurers shall then advise the Tax Commission in writing of the amount of taxes due from each mine owner or operator on the Tax Commission's list.~~

~~5. Once all county treasurers have responded, the Tax Commission shall forward to each county treasurer the taxes due, or the pro rata portion thereof, to the extent taxes have been withheld and remitted to the Tax Commission.~~

~~a. Any amount withheld in excess of the total taxes due to all counties shall be refunded to the appropriate mine owner or operator by the Tax Commission.~~

~~b. If the amount withheld is not sufficient to pay the full amount of taxes due, the county treasurers shall collect the balance of taxes directly from the mine owner or operator.~~

**]KEY: taxation, personal property, property tax, appraisals**  
**Date of Enactment or Last Substantive Amendment:**  
~~[December 15, 2010]~~**2011**

**Notice of Continuation: March 12, 2007**

**Authorizing, and Implemented or Interpreted Law: Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2- 201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2- 705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365**

**Tax Commission, Property Tax**  
**R884-24P-14**

**Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34880

FILED: 05/26/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed amendment deletes unnecessary language.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendment deletes language requiring a property owner to

submit a notice of a preservation easement to the Property Tax Division since this procedure has never been enforced.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-2-303

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** None--Property tax revenues are local revenues.
- ◆ **LOCAL GOVERNMENTS:** None--Property tax revenues are local revenues.
- ◆ **SMALL BUSINESSES:** None--Property tax revenues are local revenues.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Property tax revenues are local revenues.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--The deleted language has never been enforced.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** None--The deleted language has never been enforced.

**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:**

- ◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at [cj@utah.gov](mailto:cj@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011**

**THIS RULE MAY BECOME EFFECTIVE ON:** 07/22/2011

**AUTHORIZED BY:** Michael Cragun, Tax Commissioner

**R884. Tax Commission, Property Tax.**

**R884-24P. Property Tax.**

**R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.**

~~[A-](1)~~ The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

~~[B-](2)~~ After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor ~~[and the Tax Commission]~~ a notice of the preservation easement containing the following information:

- ~~[1-](a)~~ the property owner's name;
- ~~[2-](b)~~ the address of the property; and

~~3-~~(c) the serial number of the property.

~~€-~~(3) The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

**KEY: taxation, personal property, property tax, appraisals**  
**Date of Enactment or Last Substantive Amendment:**  
~~[December 15, 2010]~~2011  
**Notice of Continuation: March 12, 2007**  
**Authorizing, and Implemented or Interpreted Law: Art. XIII,**  
 Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2- 201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2- 705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365

**Tax Commission, Property Tax**  
**R884-24P-41**  
**Adjustment or Deferral of Property**  
**Taxes Pursuant to Utah Code Ann.**  
**Section 59-2-1347**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 34881  
 FILED: 05/26/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The section is overbroad.

**SUMMARY OF THE RULE OR CHANGE:** The section is removed since it is overbroad. The limitations this section places on adjustments or deferrals of property taxes are not supported in statute.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-2-1347

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ THE STATE BUDGET: None--Property tax revenues are local revenues.
- ◆ LOCAL GOVERNMENTS: None--Property tax revenues are local revenues.
- ◆ SMALL BUSINESSES: None--Property tax revenues are local revenues.

- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Property tax revenues are local revenues.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--Local government entities have not followed the provisions of this section, but the underlying statute.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** None--Local government entities have not followed the provisions of this section, but the underlying statute.

**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:**

- ◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at [cj@utah.gov](mailto:cj@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011**

**THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011**

**AUTHORIZED BY: Michael Cragun, Tax Commissioner**

**R884. Tax Commission, Property Tax.**  
**R884-24P. Property Tax.**

~~[R884-24P-41. Adjustment or Deferral of Property Taxes Pursuant to Utah Code Ann. Section 59-2-1347.~~

~~\_\_\_\_\_A. Requested adjustments to taxes for past years may not be made under Utah Code Ann. Section 59-2-1347 if the requested adjustment is based only on property valuation.~~

~~\_\_\_\_\_B. Utah Code Ann. Section 59-2-1347 applies only to taxes levied but unpaid and may not serve as the basis for refunding taxes already paid.~~

~~\_\_\_\_\_C. Utah Code Ann. Section 59-2-1347 may only be applied to taxes levied for the five most recent tax years except where taxes levied remain unpaid as a result of administrative action or litigation.~~

**]KEY: taxation, personal property, property tax, appraisals**  
**Date of Enactment or Last Substantive Amendment:**  
~~[December 15, 2010]~~2011  
**Notice of Continuation: March 12, 2007**

**Authorizing, Implemented, or Interpreted Law: Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2- 201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-**

2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365

**Workforce Services, Employment  
Development  
R986-200-247  
Utah Back to Work Pilot Program  
(BWP)**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34897

FILED: 06/01/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to clarify language and requirements for the program.

**SUMMARY OF THE RULE OR CHANGE:** This rule change will make it clear that subsidies are only available for new employees, not employees who were hired prior to enrollment in the program. This program is intended to help employers provide new job opportunities to unemployed employees, not to pay subsidies for employees who are already working.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-3-302(5)(b)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This applies to federally-funded programs so there are no costs or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** This program is funded with federal TANF funds so there are no costs or savings to the local government.

◆ **SMALL BUSINESSES:** There will be no costs to small businesses to comply with these changes because this is a federally-funded program.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs of any persons, businesses or local government entities to comply with these changes because there are no costs or fees associated with these proposed changes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs associated with these changes for any persons because this is a federally-funded program and there are no fees or costs associated with these proposed changes.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011**

**THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011**

**AUTHORIZED BY:** Kristen Cox, Executive Director

**R986. Workforce Services, Employment Development.**

**R986-200. Family Employment Program.**

**R986-200-247. Utah Back to Work Pilot Program (BWP).**

(1) BWP is a voluntary program providing short term subsidized employment for a maximum of three months to an eligible unemployment insurance (UI) claimant. To be eligible, a UI claimant must:

(a) be currently receiving UI benefits and have received at least one week of paid UI benefit. The waiting week is not considered a "paid" benefit for the purposes of this section;

(b) be legally eligible to work in the U.S. and be a U.S. citizen or meet the alienage requirements of R986-200-203;

(c) have at least 1 week of UI benefits remaining on his or her claim. The week can be Extended Benefits under 35A-4-402 or Emergency Unemployment Compensation (EUC) benefits as defined by the UI division;

(d) be the parent of at least one minor dependent child and be contributing to the financial support of that child or children;

(e) have not worked for the employer where the claimant is to be hired under this program more than 40 hours in the 60 days immediately preceding the date of hire under the BWP program; ~~and~~

(f) have not previously participated in the BWP or BWY program; and

(g) sign a "statement of facts" agreement.

(2) The Utah Back to Work Youth Program (BWY) provides short term subsidized employment for a maximum of three months to unemployed youth 18-24 years of age. BWY youth must be legally eligible to work in the U.S. and be unemployed but do not need to be receiving or eligible to receive UI benefits. BWY youth do not need to be a parent but must meet the requirements of subsections (1)(e) through (g) of this section.~~[- and have not participated in the BWP or BWY program before.]~~ Eligible Utah Back to Work Youth who are also eligible UI claimants are not required to have a minor dependent child.

(3) An employer eligible for a subsidy under this section is an employer that:

(a) is registered with the Department's UI division as an active employer in "good standing". For the purposes of this section, "good standing" means the employer has no delinquent UI contributions or reports;

(b) is a "qualified employer" ~~[under the "Hiring Incentives to Restore Employment Act" of 2010]~~ which "means any employer other than the United States, any State, or any political subdivision" or instrumentality thereof. A public institution of higher education is considered a "qualified employer" for purposes of this section. The employer cannot be a Temporary Help Company as defined in R994-202-102 or a Professional Employer Organization as defined in R994-202-106;

(c) pays a wage of at least \$9 per hour. Commission only jobs may qualify if the employer guarantees \$9 per hour or more, employees who receive gratuities plus wages may qualify if the employer reports \$9 per hour or more to the UI Contributions division;

(d) has not displaced or partially displaced existing workers by participating in this program;

(e) has at least one other employee;

(f) will provide the claimant with at least 35 hours work per week;~~[-and]~~

(g) does not hire the claimant for temporary or seasonal work~~[-]~~ and

(h) has signed a participation agreement with the department. The agreement must be signed before the "date of hire" of the qualified unemployed individual. A qualified unemployed individual is one who has enrolled in, and is eligible for, the BWP. The date of hire means the date services for remuneration were first performed by the employee.

(4) Once it has been verified that a claimant has been hired, a qualified employer will be paid a \$500 subsidy and an additional \$1,500 subsidy at the conclusion of the third month of employment provided the required DWS invoices have been provided.

(5) BWP and BWY will continue for as long as funding is available.

**KEY: family employment program**

**Date of Enactment or Last Substantive Amendment:** ~~[January 13,]~~ **2011**

**Notice of Continuation:** **September 8, 2010**

**Authorizing, and Implemented or Interpreted Law:** **35A-3-301 et seq.**

## Workforce Services, Unemployment Insurance **R994-207-101** General Definition

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34899

FILED: 06/01/2011

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to clarify existing law and rules.

**SUMMARY OF THE RULE OR CHANGE:** Commission salespersons fail to report work when claiming unemployment benefits because the commission has yet to be paid. This rule is intended to clarify the need to report the work, as well as the earnings for those type of workers.

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

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** This is a federally-funded program so there are no costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs or savings to local government.
- ◆ **SMALL BUSINESSES:** There are no costs or savings to small businesses as there are no fees associated with this program and it is federally funded.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or savings to any other persons, businesses, or local government entities as there are no fees associated with this program and it is federally funded.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact any employer's contribution rate.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON  
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO  
LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Kristen Cox, Executive Director

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**R994. Workforce Services, Unemployment Insurance.  
R994-207. Unemployment.  
R994-207-101. General Definition.**

(1) The objective of Sections 35A-4-401 and 35A-4-207 of the Utah Employment Security Act is to provide the means by which it may be determined when or if a claimant, who is not totally unemployed, may be allowed unemployment insurance benefits. It is not the intent of the fund to subsidize a claimant who is devoting substantially all his time and efforts to starting up a new business or expanding an existing business even though he receives no income. This is also true for a claimant who is working as a commission salesperson or licensed mortgage broker/loan officer, real estate, or securities salespersons, who may not have received commissions in excess of his or her weekly benefit amount but who has devoted substantially all of his or her efforts to the endeavor.

(2) There are generally four types of potentially employed claimants who need to have their claims examined under Section 35A-4-207. They are:

- (a) corporate officers,
- (b) self-employed individuals,
- (c) commission salesmen, and
- (d) volunteer workers.

**KEY: unemployment compensation, unemployed workers**  
**Date of Enactment or Last Substantive Amendment:**  
**~~December 16, 1998~~2011**  
**Notice of Continuation: August 24, 2010**  
**Authorizing, and Implemented or Interpreted Law: 35A-1-104(1); 35A-4-502(1)(b); 35A-4-207**

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## Workforce Services, Unemployment Insurance **R994-403-112c** Available

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 34898  
FILED: 06/01/2011

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to clarify existing law and rule.

**SUMMARY OF THE RULE OR CHANGE:** The Department can now determine when a claimant is filing from a foreign country. This has resulted in an increase of fraud prosecutions. This change is being made to tell claimants when they can and cannot travel outside of the US while receiving benefits.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-4-403(1) and Subsection 35A-4-502(1)(b)

#### ANTICIPATED COST OR SAVINGS TO:

- ♦ **THE STATE BUDGET:** This is a federally-funded program so there are no costs or savings to the state budget.
- ♦ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs or savings to local government.
- ♦ **SMALL BUSINESSES:** There are no costs or savings to any small businesses as there are no fees associated with this program as it is federally funded.
- ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or savings to any other persons, businesses, or local government entities as there are no fees associated with this program as it is federally funded.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no costs or savings to any affected persons as there are no fees associated with this program as it is federally funded. These changes will not impact any employer's contribution rate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2011

AUTHORIZED BY: Kristen Cox, Executive Director

**R994. Workforce Services, Unemployment Insurance.**

**R994-403. Claim for Benefits.**

**R994-403-112c. Available.**

(1) General Requirement.

The claimant must be available for full-time work. Any restrictions on availability, such as lack of transportation, domestic problems, school attendance, military obligations, church or civic activities, whether self-imposed or beyond the control of the claimant, lessen the claimant's opportunities to obtain suitable full-time work.

(2) Activities Which Affect Availability.

It is not the intent of the act to subsidize activities which interfere with immediate reemployment. A claimant is not considered available for work if the claimant is involved in any activity which cannot be immediately abandoned or interrupted so that the claimant can seek and accept full-time work.

(a) Activities Which May Result in a Denial of Benefits.

For purposes of establishing weekly eligibility for benefits, a claimant who is engaged in an activity for more than half the normal workweek that would prevent the claimant from working, is presumed to be unavailable and therefore ineligible for benefits. The normal workweek means the normal workweek in the claimant's occupation. This presumption can be overcome by a showing that the activity did not preclude the immediate acceptance of full-time work, referrals to work, contacts from the Department, or an active search for work. When a claimant is away from his or her residence but has made arrangements to be contacted and can return quickly enough to respond to any opportunity for work, the presumption of unavailability may be overcome. The conclusion of unavailability can also be overcome in the following circumstances:

(i) Travel Which is Necessary to Seek Work.

(A) Benefits will not be denied if the claimant is required to travel to seek, apply for, or accept work within the United States or in a foreign country where the claimant has authorization to work and where there is a reciprocal agreement. The trip itself must be for the purpose of obtaining work. There is a rebuttable presumption that the claimant is not available for work when the trip is extended to accommodate the claimant's personal needs or interests, and the extension is for more than one-half of the workweek.

(B) Unemployment benefits cannot be paid to a claimant located in a foreign country unless the claimant has authorization to work there and there is a reciprocal agreement concerning the payment of unemployment benefits with that foreign country. An exception to this general rule is that a claimant who travels to a foreign country for the express purpose of applying for employment and is out of the United States for two consecutive weeks or less is eligible for those weeks provided the claimant can prove he or she has a legal right to work in that country. A claimant who is out of the United States for more than two weeks is not eligible for benefits for any of the weeks.

(C) Unemployment benefits are intended, in part, to stimulate the economy of Utah and the United States and thus are expected to be spent in this country. A claimant who travels to a foreign country must report to the Department that he or she is out of the country, even if it is for a temporary purpose and regardless of whether the claimant intends to return to the United States if work becomes available. Failure to inform the Department will result in a fraud overpayment for the weeks benefits were paid while the claimant was in a foreign country except as provided in subparagraph (B) of this section. The claimant may be eligible if the travel is to Canada but must notify the Department of that travel. Canada is the only country with which Utah has a reciprocal agreement. If the claimant travels to, but is not eligible to work in, Canada and fails to notify the Department of the travel, it will result in a fraud overpayment for the weeks benefits were paid while the claimant was in Canada.

(ii) Definite Offer of Work or Recall.

If the claimant has accepted a definite offer of full-time employment or has a date of recall to begin within three weeks, the claimant does not have to demonstrate further availability and is not required to seek other work. Because the statute requires that a claimant be able to work, if a claimant is unable to work for more than one-half of any week due to illness or hospitalization, benefits will be denied.

(iii) Jury Duty or Court Attendance.

Jury duty or court attendance is a public duty required by law and a claimant will not be denied benefits if he or she is unavailable because of a lawfully issued summons to appear as a witness or to serve on a jury unless the claimant:

(A) is a party to the action;

(B) had employment which he or she was unable to continue or accept because of the court service; or

(C) refused or delayed an offer of suitable employment because of the court service.

The time spent in court service is not a personal service performed under a contract of hire and therefore is not considered employment.

(b) Activities Which Will Result in a Denial of Benefits.

## (i) Refusal of Work.

When a claimant refuses any suitable work, the claimant is considered unavailable. Even though the claimant had valid reasons for not accepting the work, benefits will not be allowed for the week or weeks in which the work was available. Benefits are also denied when a claimant fails to be available for job referrals or a call to return to work under reasonable conditions consistent with a previously established work relationship. This includes referral attempts from a temporary employment service, a school district for substitute teaching, or any other employer for which work is "on-call."

## (ii) Failure to Perform All Work During the Week of Separation.

(A) Benefits will be denied for the week in which separation from employment occurs if the claimant's unemployment was caused because the claimant was not able or available to do his or her work. In this circumstance, there is a presumption of continued inability or unavailability and an indefinite disqualification will be assessed until there is proof of a change in the conditions or circumstances.

(B) If the claimant was absent from work during the last week of employment and the claimant was not paid for the day or days of absence, benefits will be denied for that week. The claimant will be denied benefits under this section regardless of the length of the absence.

## (3) Hours of Availability.

## (a) Full-Time.

Except as provided in R994-403-111c(5), in order to meet the availability requirement, a claimant must be ready and willing to immediately accept full-time work. Full-time work generally means 40 hours a week but may vary due to customary practices in an occupation. If the claimant was last employed less than full-time, there is a rebuttable presumption that the claimant continues to be available for only part-time work.

## (b) Other Than Normal Work Hours.

If the claimant worked other than normal work hours and the work schedule was adjusted to accommodate the claimant, the claimant cannot continue to limit his or her hours of availability even if the claimant was working 40 hours or more. The claimant must be available for full-time work during normal work hours as is customary for the industry.

## (4) Wage Restrictions.

(a) No claimant will be expected, as a condition of eligibility, to accept a wage that is less than the state or federal minimum wage, whichever is applicable, or a wage that is substantially less favorable to the claimant than prevailing wages for similar work in the locality. Benefits cannot be allowed if the claimant is restricting himself or herself to a wage that is not available.

(b) A claimant must be given a reasonable time to seek work that will preserve his or her earning potential. At the time of filing an initial claim, or at the time of reopening a claim following a period of employment, the claimant may restrict his or her wage requirement to the highest wage earned during or subsequent to the base period and prior to filing the claim or the highest wage available in the locality for the claimant's occupation, whichever is lower, but only if there is a reasonable expectation that work can be obtained at that wage.

(i) After a claimant has received 1/3 of the maximum benefit amount (MBA) for his or her regular claim, the claimant must accept any wage that is equal to or greater than the lowest wage earned during the base period, as long as that wage is consistent with the prevailing wage standard.

(ii) After a claimant has received 2/3 of the MBA for his or her regular claim, the claimant must be willing to accept the prevailing wage in the locality for work in any base period occupation.

## (c) Exception for Deferred Claimants.

The provisions of this section do not apply to those claimants who qualify for deferrals under Subsection 35A-4-403(1)(b) and R994-403-202 during the period of deferral.

## (5) Type of Work.

(a) One of the purposes of the unemployment insurance program is to help a claimant preserve his or her highest skill by providing unemployment benefits so the claimant can find work similar to what the claimant had prior to becoming unemployed. A skill is defined as a marketable ability developed over an extended period of time by training or experience which could be lost if not used. It is not the intent of the program to subsidize individuals who are limiting their availability because of a desire to improve their employment status.

(i) At the time of filing an initial claim or reopening a claim following a period of employment, a claimant may restrict availability to the highest skilled employment performed during or subsequent to the base period provided the claimant has a reasonable expectation of obtaining that type of work. A claimant who is not willing to accept employment consistent with work performed during or subsequent to the base period must show a compelling reason for that restriction in order to be considered available for work.

(ii) After the claimant has received 1/3 of the MBA for his or her regular claim, the claimant must be willing to accept work in any of the occupations in which the claimant worked during the base period.

(iii) After the claimant has received 2/3 of the MBA for his or her regular claim, the claimant must be willing to accept any work that he or she can reasonably perform consistent with the claimant's past experience, training, and skills.

## (b) Contract Obligation.

If a claimant is restricted due to a contractual obligation from competing with a former employer or accepting employment in the claimant's regular occupation, the claimant is not eligible for benefits unless the claimant can show that he or she:

(i) is actively seeking work outside the restrictions of the noncompete contract;

(ii) has the skills and/or training necessary to obtain that work; and

(iii) can reasonably expect to obtain that employment.

## (6) Employer/Occupational Requirements.

If the claimant does not have the license or special equipment required for the type of work the claimant wants to obtain, the claimant cannot be considered available for work unless the claimant is actively seeking other types of work and has a reasonable expectation of obtaining that work.

## (7) Temporary Availability.

When an individual is limited to temporary work because of anticipated military service, school attendance, travel, church

service, relocation, a reasonable expectation of recall to a former employer for which the claimant is not in deferral status, or any other anticipated restriction on the claimant's future availability, availability is only established if the claimant is willing to accept and is actively seeking temporary work. The claimant must also show there is a realistic expectation that there is temporary work in the claimant's occupation, otherwise the claimant may be required to accept temporary work in another occupation. Evidence of a genuine desire to obtain temporary work may be shown by registration with and willingness to accept work with temporary employment services.

(8) Distance to Work.

(a) Customary Commuting Patterns.

A claimant must show reasonable access to public or private transportation, and a willingness to commute within customary commuting patterns for the occupation and community.

(b) Removal to a Locality of Limited Work Opportunities.

A claimant who moves from an area where there are substantial work opportunities to an area of limited work opportunities must demonstrate that the new locale has work for which the claimant is qualified and which the claimant is willing to perform. If the work is so limited in the new locale that there is little expectation the claimant will become reemployed, the continued unemployment is the result of the move and not the failure of the labor market to provide employment opportunities. In that case, the claimant is considered to have removed himself or herself from the labor market and is no longer eligible for benefits.

(9) School.

(a) A claimant attending school who has not been granted Department approval for a deferral must still meet all requirements of being able and available for work and be actively seeking work. Areas that need to be examined when making an eligibility determination with respect to a student include reviewing a claimant's work history while attending school, coupled with his or her efforts to secure full-time work. If the hours of school attendance conflict with the claimant's established work schedule or with the customary work schedule for the occupation in which the claimant is seeking work, a rebuttable presumption is established that the claimant is not available for full-time work and benefits will generally be denied. An announced willingness on the part of a claimant to discontinue school attendance or change his or her

school schedule, if necessary, to accept work must be weighed against the time already spent in school as well as the financial loss the claimant may incur if he or she were to withdraw.

(b) A presumption of unavailability may also be raised if a claimant moves, for the purpose of attending school, from an area with substantial labor market to a labor market with more limited opportunities. In order to overcome this presumption, the claimant must demonstrate there is full-time work available in the new area which the claimant could reasonably expect to obtain.

(10) Employment of Youth.

Title 34, Chapter 23 of the Utah Code imposes limitations on the number of hours youth under the age of 16 may work. The following limitations do not apply if the individual has received a high school diploma or is married. Claimants under the age of 16 who do not provide proof of meeting one of these exceptions are under the following limitations whether or not in student status because they have a legal obligation to attend school. Youth under the age of 16 may not work:

(a) during school hours except as authorized by the proper school authorities;

(b) before or after school in excess of 4 hours a day;

(c) before 5:00 a.m. or after 9:30 p.m. on days preceding school days;

(d) in excess of 8 hours in any 24-hour period; or

(e) more than 40 hours in any week.

(11) Domestic Obligations.

When a claimant has an obligation to care for children or other dependents, the claimant must show that arrangements for the care of those individuals have been made for all hours that are normally worked in the claimant's occupation and must show a good faith, active work search effort.

**KEY: filing deadlines, registration, student eligibility, unemployment compensation**

**Date of Enactment or Last Substantive Amendment: [March 15,] 2011**

**Notice of Continuation: June 26, 2007**

**Authorizing, and Implemented or Interpreted Law: 35A-4-403(1)**

**End of the Notices of Proposed Rules Section**

## NOTICES OF RULE EFFECTIVE DATES

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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.

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### Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

### Commerce

Occupational and Professional Licensing

No. 34545 (AMD): R156-15. Health Facility Administrator Act Rule

Published: 04/15/2011

Effective: 05/26/2011

No. 34542 (AMD): R156-63b. Security Personnel Licensing Act Armored Car Rule

Published: 04/15/2011

Effective: 05/26/2011

No. 34543 (AMD): R156-72. Acupuncture Licensing Act Rules

Published: 04/15/2011

Effective: 05/26/2011

No. 34544 (AMD): R156-83-306. Drugs Approved for Online Prescribing, Dispensing, and Facilitation

Published: 04/15/2011

Effective: 05/26/2011

### Environmental Quality

Air Quality

No. 34428 (AMD): R307-214. National Emission Standards for Hazardous Air Pollutants

Published: 03/01/2011

Effective: 06/01/2011

No. 34349 (CPR): R307-328. Gasoline Transfer and Storage

Published: 05/01/2011

Effective: 06/07/2011

No. 34349 (AMD): R307-328. Gasoline Transfer and Storage

Published: 02/01/2011

Effective: 06/07/2011

### Drinking Water

No. 34450 (AMD): R309-800. Capacity Development Program

Published: 03/15/2011

Effective: 05/23/2011

### Health

Health Care Financing, Coverage and Reimbursement Policy

No. 34523 (AMD): R414-1-5. Incorporations by Reference

Published: 04/15/2011

Effective: 05/25/2011

No. 34524 (AMD): R414-14. Home Health Services

Published: 04/15/2011

Effective: 05/25/2011

No. 34525 (AMD): R414-54-3. Services

Published: 04/15/2011

Effective: 05/25/2011

No. 34526 (AMD): R414-59-4. Client Eligibility Requirements

Published: 04/15/2011

Effective: 05/25/2011

### Natural Resources

Oil, Gas and Mining; Non-Coal

No. 34473 (AMD): R647-2. Exploration

Published: 03/15/2011

Effective: 05/25/2011

No. 34474 (AMD): R647-3. Small Mining Operations

Published: 03/15/2011

Effective: 05/25/2011

No. 34475 (AMD): R647-4-101. Filing Requirements and Review Procedures

Published: 03/15/2011

Effective: 05/25/2011



**RULES INDEX  
BY AGENCY (CODE NUMBER)  
AND  
BY KEYWORD (SUBJECT)**

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The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2011 through June 01, 2011. 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).

**DAR NOTE:** A processing error caused the exclusion of 110 nonsubstantive changes from the Index. These nonsubstantive changes reflect changed agency names in the Department of Health. The Division is working to correct the error.

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/>).

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**RULES INDEX - BY AGENCY (CODE NUMBER)**

**ABBREVIATIONS**

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
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R13-3-2	Definitions	34674	NSC	04/27/2011	Not Printed
<u>Facilities Construction and Management</u>					
R23-23	Health Reform - Health Insurance Coverage in State Contracts - Implementation	34801	EMR	05/10/2011	2011-11/105
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R27-3	Vehicle Use Standards	34256	AMD	01/25/2011	2010-24/6
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<u>Administration</u>					
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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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	34482	R359-1-511	AMD	04/26/2011	2011-6/76	
	34483	R359-1-512	AMD	04/26/2011	2011-6/78	
	34484	R359-1-515	AMD	04/26/2011	2011-6/79	
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	34271	R311-201	AMD	02/14/2011	2010-24/23	
	34739	R311-201-11	LNR	05/01/2011	2011-10/123	
	34272	R311-203	AMD	02/14/2011	2010-24/27	
	34275	R311-205	AMD	02/14/2011	2010-24/30	
	34273	R311-206	AMD	02/14/2011	2010-24/33	
	34274	R311-207	AMD	02/14/2011	2010-24/35	
	34740	R311-207-9	LNR	05/01/2011	2011-10/123	
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	34777	R994-308	5YR	05/05/2011	2011-11/134	
	34361	R994-403-113c	AMD	03/15/2011	2011-3/52	
	34445	R994-508	AMD	04/11/2011	2011-5/97	
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	34278	R359-1-506	AMD	01/31/2011	2010-24/42	
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