

# UTAH STATE BULLETIN

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

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3764, FAX 801-537-9240. 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

### State Plan Amendments for Mental Health Services

#### TARGETED CASE MANAGEMENT

This amendment to the Medicaid State Plan implements a CMS-required preprint for describing targeted case management programs. The Division of Medicaid and Health Financing (DMHF) will amend Attachments 3.1-A and 3.1-B sections of the State Plan that describe targeted case management for individuals with mental illness to use the required preprint.

DMHF will also eliminate the section of the State Plan that has separately described targeted case management for individuals with substance use disorders. DMHF will incorporate this section into the revised Attachments 3.1-A and 3.1-B sections describing targeted case management for individuals with mental illness. DMHF will combine these sections of the State Plan as substance use disorders fall under the broad classification of mental illness; therefore, separate targeted case management sections in the State Plan are not necessary.

DMHF will also amend Attachment 4.19-B of the State Plan describing targeted case management for individuals with mental illness to remove outdated language. DMHF will also eliminate the Attachment 4.19-B section related to the targeted case management for individuals with substance use disorders.

DMHF does not anticipate an increase or decrease in annual expenditures to result from these changes as the changes maintain previous coverage and payment levels.

This proposed change, if approved, becomes effective on January 1, 2013.

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

#### REHABILITATIVE MENTAL HEALTH AND SUBSTANCE USE DISORDER SERVICES

The Division of Medicaid and Health Financing (DMHF) is amending Attachments 3.1-A and 3.1-B of the Medicaid State Plan to include rehabilitative mental health services, rehabilitative substance use disorder services, rehabilitative mental health and substance use disorder services for individuals eligible for Medicaid under the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT), and peer support services, in one section, whereas currently they are in four separate sections of the State Plan.

The Centers for Medicare and Medicaid Services (CMS) has requested that the State Plan contain one section describing rehabilitative behavioral health services. This consolidation will satisfy that request.

DMHF will also eliminate the Attachment 4.19-B sections that are no longer necessary due to the consolidation. DMHF will amend the remaining Attachment 4.19-B sections to remove outdated language, and to address the deletion of the Current Procedural Terminology (CPT) code for psychiatric pharmacologic management that is effective January 1, 2013, due to changes published in the 2013 edition of the CPT manual. Pending CMS approval of this amendment, providers may be paid for select established patient evaluation and management (E&M) codes at the rate that was in effect for psychiatric pharmacologic management on December 31, 2012.

DMHF does not anticipate an increase in annual expenditures to result from these changes as they maintain previous coverage and payment levels.

This proposed change, if approved, becomes effective on January 1, 2013.

SPECIAL NOTICES

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

PHYSICIAN SERVICES

The Division of Medicaid and Health Financing (DMHF) will submit an amendment to Attachment 4.19-B of the Medicaid State Plan for physician services to address the deletion of the Current Procedural Terminology (CPT) code for psychiatric pharmacologic management that is effective January 1, 2013, due to changes published in the 2013 edition of the CPT manual. Pending CMS approval of this amendment, providers may be paid for select established patient evaluation and management (E&M) codes at the rate that was in effect for psychiatric pharmacologic management on December 31, 2012.

DMHF does not anticipate an increase in annual expenditures to result from these changes as they maintain previous coverage and payment levels.

This proposed change, if approved, becomes effective on January 1, 2013.

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

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**Health**  
**Health Care Financing, Coverage and Reimbursement Policy**  
**Pharmacy Services**

PHARMACY SERVICES

The Division of Medicaid and Health Financing (DMHF) will submit changes to the Medicaid State Plan in order to implement coverage changes for barbiturate and benzodiazepine drugs. These changes are necessary to comply with Medicaid program requirements relating to the coverage of drugs in the Medicaid program that are also covered in the Medicare Part D program for dual eligible individuals.

SPA 13-001-UT Pharmacy Services, therefore, amends the coverage of barbiturates and benzodiazepine drugs in Attachments 3.1-A and 3.1-B of the State Plan to clarify drug coverage for these drug classes. All barbiturates are covered under Medicaid, except for butalbital containing products and except for dual eligible individuals effective January 1, 2013, when these drugs are used in the treatment of epilepsy, cancer, or a chronic mental health disorder since Medicare Part D will cover those indications. Benzodiazepines are covered under Medicaid except for dual eligible individuals effective January 1, 2013, since Medicare Part D will cover all indications for the benzodiazepines.

DMHF anticipates a decrease in overall total annual expenditures by approximately \$300,000 to result from these changes. This is due to a shift in coverage for these drugs from Medicaid to Medicare for dual eligible individuals. This decrease will be offset by a slight increase in federal estimated quarterly rebate offset amount (EQROA); however, the specific impact is unknown.

These proposed changes, if approved, become effective on January 1, 2013.

*These proposed changes are pending Centers for Medicare & 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, PO 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.*

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

**Notice for January 2013 Medicaid Rate Changes**

Effective January 1, 2013, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies, potential adjustments to existing codes, and nursing home rate changes to 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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**Insurance  
Administration**

**Public Hearing on Proposed Fees for Services Provided on Costs Incurred by the Utah Insurance Department During Fiscal Year 2013**

A hearing date has been scheduled for Tuesday, January 8, 2013, at 11:00 AM in Room 3112 of the State Office Building, behind the Capitol, 450 North State Street, Salt Lake City, UT. Written comments should be directed to Jilene Whitby: email: [jwhitby@utah.gov](mailto:jwhitby@utah.gov); FAX: 801-538-3829; or mail to: State Office Building, Room 3110, Salt Lake City, UT 84114.

The purpose of the hearing is to obtain public comment regarding the following fee changes:

- (1) Surplus Lines initial licensing fee and the service fee are being combined creating **no change** in the total fee.
- (2) A late fee of \$50 for the Fraud Assessment is being **added** as approved by the 2011 Legislature.
- (3) An application fee of \$250 is being **added** for Independent Review Organizations.
- (4) The current FBI fingerprint fee of \$19.25 per individual is being **decreased** to \$16.50.

In compliance with the Americans with Disabilities Act, individuals desiring to attend the hearing who need special accommodations during the hearing (including auxiliary communicative aids and services) should notify us as directed above.

**End of the Special Notices Section**



## 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 November 16, 2012, 12:00 a.m., and November 30, 2012, 11:59 p.m. are included in this, the December 15, 2012 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 January 14, 2013. 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 April 14, 2013, 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**

**Commerce, Occupational and  
Professional Licensing  
R156-3a-102  
Definitions**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 37073

FILED: 11/26/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division and Architects Licensing Board are proposing amendments to provide further definition of architectural work that is incidental to the practice of engineering.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendments add language that allows engineers to engage in architectural work that is incidental to the practice of engineering if it affects an area not exceeding 3,000 square feet when structural elements of a building are not changed. A similar proposed amendment being made to Rule R156-22 allows architects to engage in engineering work that is incidental to the practice of architecture if it affects an area not exceeding 3,000 square feet when structural elements of a building are not changed. (DAR NOTE: The proposed amendment to Rule R156-22 is under DAR No. 37073 in this issue, December 15, 2012, of the Bulletin.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-3a-101 and Section 58-3a-303.5 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$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.

◆ **LOCAL GOVERNMENTS:** The proposed amendments only impact professional engineers and structural engineers. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** The proposed amendments only impact professional engineers and structural engineers. The proposed amendments to the definition of incidental practice allow engineers to engage in architectural work that is incidental to the practice of engineering if it affects an area not exceeding 3,000 square feet when structural elements of a building are not changed. Under this amendment, some engineers will experience a financial benefit because it allows them to provide some incidental architectural services that they are unable to provide under the current rule. In these

cases, some engineering firms may experience a financial benefit; however, the Division is unable to estimate the extent of the benefit.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only impact professional engineers and structural engineers. The proposed amendments to the definition of incidental practice allow

engineers to engage in architectural work that is incidental to the practice of engineering if it affects an area not exceeding 3,000 square feet when structural elements of a building are not changed. Under this amendment, some engineers will experience a financial benefit because it allows them to provide some incidental architectural services that they are unable to provide under the current rule. In these cases, some engineering firms may experience a financial benefit; however, the Division is unable to estimate the extent of the benefit.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendments only impact professional engineers and structural engineers. The proposed amendments to the definition of incidental practice allow engineers to engage in architectural work that is incidental to the practice of engineering if it affects an area not exceeding 3,000 square feet when structural elements of a building are not changed. Under this amendment, some engineers will experience a financial benefit because it allows them to provide some incidental architectural services that they are unable to provide under the current rule. In these cases, some engineering firms may experience a financial benefit; however, the Division is unable to estimate the extent of the benefit.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The proposed amendment clarifies the definition of the term "incidental practice" to incorporate a statutory licensing exemption that allows for any person to design, alter, or repair a portion of an existing building, under specified circumstances, without holding an architect license. No compliance is required; therefore, businesses will not experience any compliance-related costs. Businesses that choose to operate under the licensing exemption may recognize new revenues, which will vary and cannot be estimated.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/16/2013

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 01/16/2013 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/23/2013

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.****R156-3a. Architect Licensing Act Rule.****R156-3a-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 3a, as used in Title 58, Chapters 1, 3a, and 22 or this rule:

(1) "ARE" means the NCARB Architectural Registration Examination.

(2) "Committee" means the IDP Committee created in Section R156-3a-201.

(3) "Complete and final" as used in Subsection 58-3a-603(1) means "complete construction plans" as defined in Subsection 58-3a-102(4).

(4) "EESA" means the Education Evaluation Services for Architects.

(5) "Employee, subordinate, associate, or drafter of an architect" as used in Subsections 58-3a-102(8), 58-3a-603(1)(b) and this rule means one or more individuals not licensed as an architect who are working for, with, or providing architectural services directly to the licensed architect under the supervision of the licensed architect.

(6) "Incidental practice" means "architecture work as is incidental to the practice of engineering" as used in Subsection 58-22-102(9) and "engineering work as is incidental to the practice of architecture" as used in Subsection 58-3a-102(6) which:

(a) can be safely and competently performed by the licensee without jeopardizing the life, health, property and welfare of the public;

(b) is secondary and substantially less in scope and magnitude when compared to the work performed or to be performed by the licensee in the licensed profession;

(c) is work in which the licensee is fully responsible for the incidental practice performed as provided in Subsection 58-3a-603(1) or Subsection 58-22-603(1);

(d) unless exempt from licensure as provided in Subsection 58-3a-304(1)(e), is work that affects not greater than 49 occupants as determined in Section 1004 of the 2009 International Building Code;

(e) unless exempt from licensure as provided in Subsection 58-3a-304(1)(e), is work included on a project with a construction value not greater than 15 percent of the overall

construction value for the project including all changes or additions to the contracted or agreed upon work; and

(f) shall not include work on a building or related structure in an occupancy category of III or IV as defined in Section 1604.5 of the 2009 International Building Code.

(7) "Intern Development Program" or "IDP" as used in Subsection R156-3a-302(1) means a NCARB approved training program.

(8) "NAAB" means the National Architectural Accrediting Board.

(9) "NCARB" means the National Council of Architectural Registration Boards.

(10) "Program of diversified practical experience" as used in Subsection 58-3a-302(1)(e) means:

(a) current licensure in a recognized jurisdiction; or

(b) the training standards and requirements set forth in the Intern Development Program.

(11) "Recognized jurisdiction" as used in Subsections 58-3a-302(2)(d)(i) and (iii), for licensure by endorsement, means any jurisdiction that is a member of NCARB.

(12) "Responsible charge" by a principal, as used in Subsection 58-3a-102(7), means direct control and management by a principal over the practice of architecture by an organization.

(13) "Technical submissions", as used in Section R156-3a-601, means documents which are:

(a) required by public authorities for building permits or regulatory approvals; or

(b) intended for construction purposes, including all addenda and other changes to submissions.

(14) "Under the direction of the architect" as used in Subsection 58-3a-102(8), as part of the definition of "supervision of an employee, subordinate, associate, or drafter of an architect" means that the unlicensed employee, subordinate, associate, or drafter of the architect engages in the practice of architecture only on work initiated by the architect, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of the architect.

(15) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 3a, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-3a-502.

**KEY: architects, licensing**

**Date of Enactment or Last Substantive Amendment:** ~~July 30, 2012~~ **2013**

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

**Authorizing, and Implemented or Interpreted Law:** 58-3a-101; 58-1-106(1)(a); 58-1-202(1)(a), 58-3a-303.5

Commerce, Occupational and  
Professional Licensing  
**R156-22**  
Professional Engineers and  
Professional Land Surveyors Licensing  
Act Rule

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 37074

FILED: 11/26/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division and Professional Engineers and Professional Land Surveyors Licensing Board are proposing amendments to provide further definition of engineering work that is incidental to the practice of architecture, make a minor technical change, and reduce requirements for waiving of an exam for applicants for licensure by endorsement.

**SUMMARY OF THE RULE OR CHANGE:** In Section R156-22-102, the proposed amendments add language that allows architects to engage in engineering work that is incidental to the practice of architecture if it affects an area not exceeding 3,000 square feet when structural elements of a building are not changed. A similar proposed amendment being made to Section R156-3a-102 allows engineers to engage in architectural work that is incidental to the practice of engineering if it affects an area not exceeding 3,000 square feet when structural elements of a building are not changed. In Subsection R156-22-302d(3)(b), a minor wording change is made. Under Subsection R156-22-302d(4)(a)(ii), an applicant for licensure by endorsement as a professional engineer must have been licensed for at least 20 years in order to qualify for waiving of the National Council of Examiners in Engineering and Surveying (NCEES) Principles and Practice of Engineering (PE) Examination. The Board and Division feel this requirement is overly restrictive and propose that 10 years of licensure be adopted as a more reasonable standard. (DAR NOTE: The proposed amendment to Section R156-3a-102 is under DAR No. 37073 in this issue, December 15, 2012, of the Bulletin.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-22-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$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.
- ◆ **LOCAL GOVERNMENTS:** The proposed amendments only impact architects, professional engineers, and applicants for the professional engineer license. As a result, the proposed amendments do not apply to local governments.
- ◆ **SMALL BUSINESSES:** The proposed amendments only impact architects, professional engineers, and applicants for the professional engineer license. The proposed amendments to the definition of incidental practice allow architects to engage in engineering work that is incidental to the practice of architecture if it affects an area not exceeding 3,000 square feet when structural elements of a building are

not changed. Under this amendment, some architects will experience a financial benefit because it allows them to provide some incidental engineering services that they are unable to provide under the current rule. In these cases, some architectural firms may experience a financial benefit; however, the Division is unable to estimate the extent of the benefit. Reducing the number of years of licensure required to waive the PE exam requirement results in a quicker and less expensive path to licensure by endorsement for a small number of applicants for the professional engineer license. In these cases, some engineering firms may experience a financial benefit; however, the Division is unable to estimate the extent of the benefit.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only impact architects, professional engineers, and applicants for the professional engineer license. The proposed amendments to the definition of incidental practice allow architects to engage in engineering work that is incidental to the practice of architecture if it affects an area not exceeding 3,000 square feet when structural elements of a building are not changed. Under this amendment, some architects will experience a financial benefit because it allows them to provide some incidental engineering services that they are unable to provide under the current rule. In these cases, some architectural firms may experience a financial benefit; however, the Division is unable to estimate the extent of the benefit. Reducing the number of years of licensure required to waive the PE exam requirement results in a quicker and less expensive path to licensure by endorsement for a small number of applicants for the professional engineer license. In these cases, some engineering firms may experience a financial benefit; however, the Division is unable to estimate the extent of the benefit.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendments only impact architects, professional engineers, and applicants for the professional engineer license. The proposed amendments to the definition of incidental practice allow architects to engage in engineering work that is incidental to the practice of architecture if it affects an area not exceeding 3,000 square feet when structural elements of a building are not changed. Under this amendment, some architects will experience a financial benefit because it allows them to provide some incidental engineering services that they are unable to provide under the current rule. In these cases, some architectural firms may experience a financial benefit; however, the Division is unable to estimate the extent of the benefit. Reducing the number of years of licensure required to waive the PE exam requirement results in a quicker and less expensive path to licensure by endorsement for a small number of applicants for the professional engineer license. In these cases, some engineering firms may experience a financial benefit; however, the Division is unable to estimate the extent of the benefit.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendment clarifies the definition of the term "incidental practice" to incorporate a statutory licensing exemption that allows for any person to design, alter, or repair a portion of an existing building, under specified circumstances, without holding an engineer or land surveyor license. No compliance is required; therefore, businesses will not experience any compliance-related costs. Businesses that choose to operate under the licensing exemption may recognize new revenues, which will vary and cannot be estimated.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

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INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 01/16/2013 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/23/2013

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.  
R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rule.**

**R156-22-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1, 3a and 22, as used in Title 58, Chapters 1, 3a and 22, or this rule:

(1) "Complete and final", as used in Section 58-22-603, means "complete construction plans" as defined in Subsection 58-22-102(3).

(2) "Direct supervision", as used in Subsection 58-22-102(10), means "supervision" as defined in Subsection 58-22-102(16).

(3) "Employee, subordinate, associate, or drafter of a licensee", as used in Subsections 58-22-102(16), 58-22-603(1)(b) and this rule, means one or more individuals not licensed under this chapter, who are working for, with, or providing professional engineering, professional structural engineering, or professional

land surveying services directly to and under the supervision of a person licensed under this chapter.

(4) "Engineering surveys", as used in Subsection 58-22-102(9), include all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but exclude the surveying of real property for the establishment of land boundaries, rights-of-way, easements, alignment of streets, and the dependent or independent surveys or resurveys of the public land survey system.

(5) "Highly toxic materials", as used in Subsection 58-22-102(14)(a)(ii)(F), is hazardous materials as defined in Section 307 of the 2009 International Building Code and Section 2703 of the 2009 International Fire Code.

(6) "Incidental practice" means "architecture work as is incidental to the practice of engineering", as used in Subsection 58-22-102(9), and "engineering work as is incidental to the practice of architecture", as used in Subsection 58-3a-102(6), which:

(a) can be safely and competently performed by the licensee without jeopardizing the life, health, property and welfare of the public;

(b) is secondary and substantially less in scope and magnitude when compared to the work performed or to be performed by the licensee in the licensed profession;

(c) is work in which the licensee is fully responsible for the incidental practice performed as provided in Subsections 58-3a-603(1) or 58-22-603(1);

(d) unless exempt from licensure as provided in Subsection 58-22-305(1)(e), is work that affects not greater than 49 occupants as determined in Section 1004 of the 2009 International Building Code;

(e) unless exempt from licensure as provided in Subsection 58-22-305(1)(e), is work included on a project with a construction value not greater than 15 percent of the overall construction value for the project including all changes or additions to the contracted or agreed upon work; and

(f) shall not include work on a building or related structure in an occupancy category of III or IV as defined in 1604.5 of the 2009 International Building Code.

(7) "Maximum allowable quantities", as used in Subsection 58-22-102(14)(a)(ii)(F), is quantities of hazardous materials as set forth in Section 307 of the 2009 International Building Code, Tables 307.1(1) and 307.1(2), which when exceeded, would classify the building, structure or portion thereof as Group H-1, H-2, H-3, H-4 or H-5 hazardous use.

(8) "NCEES FE", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Fundamentals of Engineering Examination.

(9) "NCEES FS", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Fundamentals of Surveying Examination.

(10) "NCEES PE", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Principles and Practice of Engineering Examination.

(11) "NCEES PS", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Principles and Practice in Surveying Examination.

(12) "NCEES SE", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Structural Engineering Examination.

(13) "Professional structural engineering or the practice of structural engineering", as defined in Subsection 58-22-102(14), is further defined to exclude the design and oversight of the construction and installation of highway, utility, or pedestrian bridges.

(14) "Recognized jurisdiction", as used in Subsection 58-22-302(4)(d)(i), for licensure by endorsement, means any state, district or territory of the United States, or any foreign country that issues licenses to professional engineers, professional structural engineers, or professional land surveyors.

(15) "Responsible charge" by a principal, as used in Subsection 58-22-102(7), means that the licensee is assigned to and is personally accountable for the production of specified professional engineering, professional structural engineering or professional land surveying projects within an organization.

(16) "TAC/ABET" means Technology Accreditation Commission/Accreditation Board for Engineering and Technology(ABET, Inc.).

(17) "Under the direction of the licensee", as used in Subsection 58-22-102(16), as part of the definition of "supervision of an employee, subordinate, associate, or drafter of a licensee", means that the unlicensed employee, subordinate, associate, or drafter of a person licensed under this chapter engages in the practice of professional engineering, professional structural engineering, or professional land surveying only on work initiated by a person licensed under this chapter, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of a person licensed under this chapter.

(18) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 22, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-22-502.

**R156-22-302d. Qualifications for Licensure - Examination Requirements.**

(1) Examination Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(f), the examination requirements for licensure as a professional engineer are defined, clarified or established as the following:

(i) the NCEES FE examination with a passing score as established by the NCEES except that an applicant who has completed one of the following is not required to pass the FE examination:

(A) a Ph.D. or doctorate degree in engineering from an institution that offers EAC/ABET undergraduate programs in the Ph.D. field of engineering; or

(B) A Ph.D. or doctorate degree in engineering from a foreign institution if the engineering curriculum is determined by the NCEES Credentials Evaluations, formerly known as the Center for Professional Engineering Education Services (CPEES), to fulfill the required curricular content of the NCEES Engineering Education Standard.

(ii) the NCEES PE examination or the NCEES SE examination with a passing score as established by the NCEES; and

(iii) pass all questions on the open book, take home Utah Law and Rules Examination, which is included as part of the license application form.

(b) If an applicant was approved by the Division of Occupational and Professional Licensing to take the examinations required for licensure as an engineer under prior Utah statutes and rules and did take and pass all examinations required under such prior rules, the prior examinations will be acceptable to qualify for reinstatement of licensure rather than the examinations specified under Subsection R156-22-302d(1)(a).

(c) Prior to submitting an application for pre-approval to sit for the NCEES PE examination, an applicant must have successfully completed three out of the four years of the qualifying experience requirements set forth in Subsection R156-22-302c(1) after having successfully completed the education requirements set forth in Subsection R156-22-302b(1).

(d) The admission criteria to sit for the NCEES FE examination is set forth in Section 58-22-306.

(2) Examination Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(f), the examination requirements for licensure as a professional structural engineer are established as the following:

(i) as part of the application for license, pass all questions on the open book, take home Utah Law and Rules Examination.

(ii) the NCEES FE examination with a passing score as established by the NCEES;

(iii)(A) the NCEES SE examination;

(B) prior to April 2011, the NCEES Structural I and Structural II Examinations with a passing score as established by the NCEES;

(C) prior to January 1, 2004, an equivalent 16-hour state written examination with a passing score; or

(D) the NCEES Structural II exam and an equivalent 8-hour state written examination with a passing score.

(b) Prior to submitting an application for pre-approval to sit for the NCEES SE examination, an applicant must have successfully completed two out of the three years of the experience requirements set forth in Subsection R156-22-302c(3).

(3) Examination Requirements - Professional Land Surveyor.

(a) In accordance with Subsection 58-22-302(3)(e), the examination requirements for licensure as a professional land surveyor are established as the following:

(i) the NCEES FS examination with a passing score as established by the NCEES;

(ii) the NCEES PS examination with a passing score as established by the NCEES; and

(iii) the Utah Local Practice Examination with a passing score of at least 75. An applicant who fails the Utah Local Practice Examination may retake the examination as follows:

(A) no sooner than 30 days following any failure, up to three failures; and

(B) no sooner than six months following any failure thereafter.

(b) Prior to submitting an application for pre-approval to sit for the NCEES PS examination, an applicant [~~must have~~shall successfully complete[~~d~~] the education requirement set forth in Subsection R156-22-302b(2) and three out of the four years of the qualifying experience requirements set forth in Subsection R156-22-302c(4).

(4) Examination Requirements for Licensure by Endorsement.

In accordance with Subsection 58-22-302(4)(d)(ii), the examination requirements for licensure by endorsement are established as follows:

(a) Professional Engineer: An applicant for licensure as a professional engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(1) except that the Board may waive one or more of the following examinations under the following conditions:

(i) the NCEES FE examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE examination for initial licensure from the recognized jurisdiction the applicant was originally licensed;

(ii) the NCEES PE examination for an applicant who is a principal for five of the last seven years preceding the date of the license application, who has been licensed for ~~[20]~~10 years preceding the date of the license application, and who was not required to pass the NCEES PE examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(b) Professional Structural Engineer: An applicant for licensure as a professional structural engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(2) except that the Board may waive the NCEES FE examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(c) Professional Land Surveyor: An applicant for licensure as a professional land surveyor by endorsement shall comply with the examination requirements in Subsection R156-22-302d(3) except that the Board may waive either the NCEES FS examination or the NCEES PS examination or both to an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FS examination or the NCEES PS examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

**KEY:** professional land surveyors, professional engineers, professional structural engineers

**Date of Enactment or Last Substantive Amendment:** ~~[June 21, 2012]~~2013

**Notice of Continuation:** June 25, 2012

**Authorizing, and Implemented or Interpreted Law:** 58-22-101; 58-1-106(1)(a); 58-1-202(1)(a)

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Commerce, Occupational and  
Professional Licensing  
**R156-44a**  
Nurse Midwife Practice Act Rules

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 37071  
FILED: 11/20/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** During the 2012 Legislative General Session, H.B. 190 was passed, clearly enabling midwives to practice without the necessity of a physician's signature on a practice and referral plan. Although not required by statute or rule, the signature line on the Division (DOPL)-generated "Practice and Referral Plan" form triggered some midwives, physicians, and employers to require a physician's signature in order for the midwife to practice and obtain hospital privileges. This perceived requirement caused great difficulty and hardship for midwives, particularly in rural areas, because they were unable to engage physicians to sign the form and had to then quit practicing as midwives. Some physicians assumed that by signing the "Practice and Referral Plan" form they would be accepting liability for the midwife's practice. Not wanting to accept liability for a midwife's actions, many physicians understandably declined to sign the "Practice and Referral Plan" form. H.B. 190 incorporated and defined the term, "Intrapartum Referral Plan." This bill also amended the unprofessional conduct provisions, necessitating the assignment of administrative penalties, which this rule filing does. Other amendments are made at the request of the Certified Nurse Midwife Board to update referenced documents and the accrediting body's correct name.

**SUMMARY OF THE RULE OR CHANGE:** Throughout the rule, "these rules" is updated to "this rule" and the term "Division" is capitalized where appropriate. Subsection R156-44a-102(1) is updated to reflect the correct name of the accreditation body affiliated with the American College of Nurse-Midwives. Subsection R156-44a-102(5) updates the most current editions of the "Core Competencies for Basic Midwifery Practice" and the "Standards for the Practice of Midwifery". Subsection R156-44a-102(6) is being added to clearly state that the signature of a physician is not required on the "Intrapartum Referral Plan", reflecting the mandate of H.B. 190 in Subsections 58-44a-102(6) and (9). Subsections R156-44a-402(27) and (28) are added to reflect administrative penalties for failing to have and maintain a safe mechanism for obtaining medical consultation, collaboration, and referral with a consulting physician; and for falsely representing that the certified nurse midwife does have and maintains a safe mechanism for obtaining medical consultation, collaboration, and referral with a consulting physician. Section R156-44a-502 updates the "Code of Ethics" published by the American College of Nurse-Midwives.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-44a-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

## MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Core Competencies for Basic Midwifery Practice, published by American College of Nurse-Midwives (ACNM), June 2012
- ◆ Updates Standards for the Practice of Midwifery, published by American College of Nurse-Midwives, September 2011
- ◆ Updates Code of Ethics, published by American College of Nurse-Midwives, October 2008

## 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.
- ◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed certified nurse midwives and applicants for licensure in that classification. As a result, the proposed amendments do not apply to local governments.
- ◆ **SMALL BUSINESSES:** The proposed amendments may enable solo practitioners who are licensed as a certified nurse midwife or small group midwifery practices, particularly in rural Utah, who have not been able to practice due to the signature "requirement", to once again begin providing services to Utah citizens. Additionally, new certified nurse midwife graduates will be more likely to stay in Utah to practice and will not have to contend with the "practice and referral plan" signature that became a barrier to practice. The Division is unable to reasonably quantify any costs or savings associated with these proposed amendments.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments may allow Utah citizens to obtain obstetrical and women's health care from certified nurse midwives at reduced cost when compared to physician practice costs. Health care systems may be able to provide more and expanded services to women, particularly in rural areas, with the addition of certified nurse midwives to their provider panels. Physicians will be more likely to serve as consultants and referral sources for practicing certified nurse midwives now that they do not have to sign a document that was perceived as accepting liability for a midwife's practice. The Division is unable to reasonably quantify any costs or savings associated with these proposed amendments.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendments may enable solo practitioners who are licensed as a certified nurse midwife or small group midwifery practices, particularly in rural Utah, who have not been able to practice due to the signature "requirement", to once again begin providing services to Utah citizens. Additionally, new certified nurse midwife graduates will be more likely to stay in Utah to practice and will not have to contend with the "practice and referral plan" signature that became a barrier to practice. The proposed amendments may allow Utah citizens to obtain obstetrical and women's health care from certified nurse midwives at reduced cost when compared to physician practice costs. Health care systems may be able to provide more and expanded services to women, particularly in rural

areas, with the addition of certified nurse midwives to their provider panels. Physicians will be more likely to serve as consultants and referral sources for practicing certified nurse midwives now that they do not have to sign a document that was perceived as accepting liability for a midwife's practice. The Division is unable to reasonably quantify any costs or savings associated with these proposed amendments. There is also no cost associated with obtaining updated documents which are incorporated by reference as the documents are available for free on the American College of Nurse-Midwives website.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The proposed amendments update terminology and statutory references, clarify that a physician's signature is not required as part of an intrapartum referral plan, and outline administrative penalties that may be assessed to a nurse midwife who fails to create a plan or who falsely represents to the Division that a plan is in place. Intrapartum referral plans were mandated by the Legislature in the 2012 General Session (H.B. 190). All compliance and enforcement costs were considered by the Legislature in passing the bill. No additional costs to small businesses are anticipated from this rule filing.

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:**

- ◆ Debra Hobbins by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at dhobbins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2013

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 01/09/2013 02:00 PM, Heber Wells Bldg, 160 E 300 S, Conference Room 475, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2013

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.  
R156-44a. Nurse Midwife Practice Act Rule[s].  
R156-44a-101. Title.**

Th[ese]is rule[s-are] is known as the "Nurse Midwife Practice Act Rule[s]."

**R156-44a-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 44a, as used in Title 58, Chapters 1 and 44a or th[ese]is rule[s]:

(1) "Approved certified nurse midwifery education program" means an educational program which is accredited by the American Midwifery Certification Board (AMCB), affiliated with the American College of Nurse-Midwives (ACNM).

(2) "CNM" means a certified nurse midwife.

(3) "Delegation" means transferring to an individual the authority to perform a selected nursing task in a selected situation. The nurse retains accountability for the delegation.

(4) "Direct supervision" as used in Section 58-44a-305 means that the person providing supervision shall be available on the premises at which the supervisee or consultee is engaged in practice.

(5) "Generally recognized scope and standards of nurse midwifery" means the scope and standards of practice set forth in the "Core Competencies for Basic Midwifery Practice", [~~May 2002~~June 2012], and the "Standards for the Practice of Midwifery", [~~March 2003~~September 2011], published by the American College of Nurse-Midwives which are hereby adopted and incorporated by reference, or as established by the professional community.

(6) "Intrapartum referral plan":

(a) is as defined in Section 58-44a-102; and

(b) as provided in Section 58-44a-102, does not require the signature of a physician.

([6]7) "Supervision" in Section R156-44a-601 means the provision of guidance or direction, evaluation and follow up by the certified nurse midwife for accomplishment of tasks delegated to unlicensed assistive personnel or other licensed individuals.

([7]8) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 44a, is further defined in Section R156-44a-502.

**R156-44a-103. Authority - Purpose.**

Th[ese]is rule[s-are] is adopted by the [d]Division under the authority of Subsection 58-1-106(1)(a) to enable the [d]Division to administer Title 58, Chapter 44a.

**R156-44a-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 44a is established by rule in Section R156-1-308a(1).

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

(3) Each applicant for licensure renewal shall hold a valid certification from the American Midwifery Certification Board, Inc.

**R156-44a-402. Administrative Penalties.**

In accordance with Subsections 58-44a-102(1) and 58-44a-402(1), unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

(1) Engaging in practice as a CNM or RN when not licensed or exempt from licensure: initial offense: \$2,000 - \$5,000  
subsequent offense(s): \$5,000 - \$10,000

(2) Representing oneself as a CNM or RN when not licensed:

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(3) Using any title that would indicate that one is licensed under this chapter:

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(4) Practicing or attempting to practice nursing without a license or with a restricted license:

initial offense: \$2,000 - \$5,000

subsequent offense(s): \$5,000 - \$10,000

(5) Impersonating a licensee or practicing under a false name:

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(6) Knowingly employing an unlicensed person:

initial offense: \$500 - \$1,000

subsequent offense(s): \$1,000 - \$5,000

(7) Knowingly permitting the use of a license by another person:

initial offense: \$500 - \$1,000

subsequent offense(s): \$1,000 - \$5,000

(8) Obtaining a passing score, applying for or obtaining a license, or otherwise dealing with the [d]Division or board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission:

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(9) Violating or aiding or abetting any other person to violate any statute, rule, or order regulating nurse midwifery:

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(10) Violating, or aiding or abetting any other person to violate any generally accepted professional or ethical standard:

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(11) Engaging in conduct that results in convictions or, or a plea of nolo contendere to a crime of moral turpitude or other crime:

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(12) Engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority:

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(13) Engaging in conduct, including the use of intoxicants, drugs to the extent that the conduct does or may impair the ability to safely engage in practice as a CNM:

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(14) Practicing or attempting to practice as a CNM when physically or mentally unfit to do so:

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(15) Practicing or attempting to practice as a CNM through gross incompetence, gross negligence, or a pattern of incompetency or negligence:

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(16) Practicing or attempting to practice as a CNM by any form of action or communication which is false, misleading, deceptive, or fraudulent:

initial offense: \$100 - \$500  
 subsequent offense(s): \$200 - \$1,000  
 (17) Practicing or attempting to practice as a CNM beyond the individual's scope of competency, abilities, or education:  
 initial offense: \$100 - \$500  
 subsequent offense(s): \$200 - \$1,000  
 (18) Practicing or attempting to practice as a CNM beyond the scope of licensure:  
 initial offense: \$100 - \$500  
 subsequent offense(s): \$200 - \$1,000  
 (19) Verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice:  
 initial offense: \$100 - \$500  
 subsequent offense(s): \$200 - \$1,000  
 (20) Disregarding for a patient's dignity or right to privacy as to his person, condition, possessions, or medical record:  
 initial offense: \$100 - \$500  
 subsequent offense(s): \$200 - \$1,000  
 (21) Engaging in an act, practice, or omission which does or could jeopardize the health, safety, or welfare of a patient or the public:  
 initial offense: \$500 - \$2,000  
 subsequent offense(s): \$2,000 - \$10,000  
 (22) Failing to confine one's practice to those acts permitted by law:  
 initial offense: \$500 - \$2,000  
 subsequent offense(s): \$2,000 - \$10,000  
 (23) Failure to file or impeding the filing of required reports:  
 initial offense: \$100 - \$500  
 subsequent offense(s): \$200 - \$1,000  
 (24) Breach of confidentiality:  
 initial offense: \$200 - \$1,000  
 subsequent offense(s): \$500 - \$2,000  
 (25) Failure to pay a penalty:  
 Double the original penalty amount up to \$10,000  
 (26) Prescribing a Schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan:  
 initial offense: \$500 - \$1,000  
 subsequent offense(s): \$500 - \$2,000  
(27) Failure to have and maintain a safe mechanism for obtaining medical consultation, collaboration, and referral with a consulting physician, including failure to identify one or more consulting physicians in the written documents required by Subsection 58-44a-102(9)(b)(iii):  
 initial offense: \$500 - \$1,000  
 subsequent offense(s): \$500 - \$2,000  
(28) Representing that the certified nurse midwife is in compliance with Subsection 58-44a-502(8)(a) when the certified nurse midwife is not in compliance with Subsection 58-44a-502(8)(a):  
 initial offense: \$500 - \$1,000  
 subsequent offense(s): \$500 - \$2,000  
 ([27]29) Any other conduct which constitutes unprofessional or unlawful conduct:  
 initial offense: \$100 - \$500  
 subsequent offense(s): \$200 - \$1,000

**R156-44a-502. Unprofessional Conduct.**

"Unprofessional conduct" includes failure to abide by the "Code of Ethics" [of]published by the American College of Nurse-Midwives["], [December 2004, published by the American College of Nurse-Midwives]October 2008, which is hereby adopted and incorporated by reference.

**KEY: licensing, midwifery, certified nurse midwife****Date of Enactment or Last Substantive Amendment: [January 5, 2006]2013****Notice of Continuation: February 5, 2009****Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-44a-101**

## Commerce, Real Estate **R162-57a** Timeshare and Camp Resort Rules

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 37076

FILED: 11/27/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule amendment is to eliminate extraneous definitions, simplify project registration procedures for out-of-state projects, and clarify unprofessional conduct by adding internal references.

**SUMMARY OF THE RULE OR CHANGE:** This amendment eliminates the definition of "marketing of interests" and replaces any reference to "marketing" with the term "advertising," "offering," or "selling," as appropriate, throughout. This amendment also adds, in Section R162-57a-5, that an entity that advertises, offers, or sells properties situated outside of Utah for which the entity does not hold fee title may now provide a title opinion from a title insurer licensed where the property is situated. Previously, an entity was only able to provide an opinion letter from an independent, third party attorney, actively licensed to practice in the jurisdiction where the property is situated. Finally, Section R162-57a-13 adds a reference to Subsection R162-57a-11(2)(b)(i) to clarify that it is unprofessional conduct to fail to provide the complete property report as further described in the referenced section.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 57-18-3

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** This rule filing removes moot language and clarifies existing provisions. The state budget will not be affected.

- ◆ LOCAL GOVERNMENTS: Local governments are not required to comply with or enforce the timeshare administrative rules. This filing will have no fiscal impact on local governments.
- ◆ SMALL BUSINESSES: This rule filing is for clarification only. It does not impose any new requirements or procedures on small businesses. Therefore, no fiscal impact is anticipated.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule filing is for clarification only. It does not impose any new requirements or procedures on affected persons. Therefore, no fiscal impact is anticipated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule filing is for clarification only. It will allow affected entities to more easily provide proof that they are legally entitled to use property. No fiscal impact is anticipated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendments eliminate a defined term and, instead, make use of terms that are defined in statute. They also clarify registration requirements for developments located outside of Utah and add an internal reference to clarify when a failure to provide disclosure documents would be considered unprofessional conduct. Where the amendments are for clarification only, no fiscal impact to businesses is anticipated.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Mike Palumbo by phone at 801-530-6654, or by Internet E-mail at mpalumbo@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/15/2013

THIS RULE MAY BECOME EFFECTIVE ON: 02/01/2013

AUTHORIZED BY: Jonathan Stewart, Director

**R162. Commerce, Real Estate.**

**R162-57a. Timeshare and Camp Resort Rules.**

**R162-57a-2. Definitions.**

(1) "Affiliation" means an employment or independent contractor relationship between a salesperson and a developer.

(2) "Amendment" means a change to an original registration as to information submitted pursuant to Subsection R162-57a-5(3)(j)-(y).

(3) "Annual report" means information submitted to the division in order to renew a project registration, including the following:

(a) the number of intervals, memberships, or other interests sold since the registration was issued or last renewed;

(b) the total number of intervals, memberships, or other interests sold since the date of initial registration;

(c) the number of intervals, memberships, or other interests reacquired by foreclosure or similar proceeding that had previously been reported as sold;

(d) the total number of registered but unsold intervals, memberships, or other interests as of the date of the annual report; and

(e) the total number of intervals, memberships, or other interests that have been registered.

(4) The acronym "ATR" means ARELLO Timeshare Registry, which is the online database system through which developers may register projects with the division.

(5) "Business day" means a day other than a:

(a) Saturday;

(b) Sunday; or

(c) state or federal holiday.

(6) "Common promotional plan" means a plan whereby multiple timeshare or camp resort interests, whether in the same location or not, are advertised and/or offered for disposition without the ownership of the interests being differentiated or distinguished.

(7) "Common facilities" means areas and amenities within a project to which all purchasers share an equal right of access and use.

(8) "Consolidation" means the registration of additional interests in a project for which the director has previously issued a registration.

(9) "Day" means calendar day unless specified as "business day."

(10) "Direct sales presentation" means a meeting in which a salesperson provides information about project(s) or interest(s) to one or more prospective purchasers.

(11) "Entity" means:

(a) a corporation;

(b) a limited liability company;

(c) a partnership;

(d) a company;

(e) an association;

(f) a joint venture;

(g) a business trust;

(h) a trust; or

(i) another organization.

(12) "Expired registration" means a project or salesperson registration that may not be used to ~~market~~ advertise, offer, or sell interests because the holder of the registration failed to renew it by or before the expiration date.

~~[(13) "Marketing of interests" means implementing a common promotional plan through:~~

~~(a) print media;~~

~~(b) direct mailings;~~

~~(c) television, radio, or Internet advertising;~~

~~(d) in-person communication;~~  
~~(e) sales presentations; or~~  
~~(f) any other method of contacting a prospective purchaser.~~  
 ] [(14)](13) "Notice of defect" means a written communication from the director informing an applicant that the applicant must submit additional information to clarify, complete, or correct an application for:

- (a) registration;
- (b) consolidation; or
- (c) renewal.

[(15)](14) "Person" means an individual or an entity.  
 [(16)](15) "Personal information" means data that may be used to identify or contact a prospective purchaser, including:

- (a) name;
- (b) home or business address;
- (c) home, business, or cell telephone number; and
- (d) e-mail address.

[(17)](16) "Prospective purchaser" means a person who:

- (a) attends a sales presentation;
- (b) communicates with a developer or salesperson in order to obtain information about a project;
- (c) provides personal information to a developer or salesperson; or
- (d) is solicited by a developer or salesperson through any type of ~~marketing~~ advertisement.

[(18)](17) "Property report" means a document that includes:

- (a) disclosures required pursuant to Section 57-19-11;
- (b) a cover sheet as generated and provided by the division; and
- (c) a receipt generated by the division.

[(19)](18) "Public offering statement" has the same meaning as "property report."  
 [(20)](19) "Registration" means:

- (a) as to a project, division approval of the project as being suitable for the ~~advertisement, offering, and sale~~ ~~marketing~~ of interests; and
- (b) as to a salesperson, division approval for the salesperson to engage in the ~~advertisement, offering, and sale~~ ~~marketing~~ of interests.

[(21)](20) "Reinstatement period" means a 30-day period following the expiration of registration during which a person may reinstate an expired registration by submitting all required renewal materials and paying applicable fees.  
 [(22)](21) The acronym "RELMS" means Real Estate License Management System, which is the online forum through which registered salespersons may submit forms and information to the division.  
 [(23)](22) "Renewal" means extending a registration for an additional period on or before the date the registration expires.  
 [(24)](23) "Supplement" means a change in the information submitted pursuant to Subsection R162-57a-5(3)(a)-(i).  
 [(25)](24) "Temporary permit" means authorization from the division for a developer to engage in the ~~marketing~~ ~~advertisement, offering, and sale~~ of interests for a period not to exceed 30 days.

#### **R162-57a-5. Project Registration.**

- (1) Registration required.

(a) A person may not engage in the ~~marketing~~ ~~advertisement, offering, or sale~~ of interests unless:

- (i) the project is properly registered with the division pursuant to Section 57-19 et seq. and these rules; and
- (ii) each individual who will engage in ~~marketing~~ ~~offering or selling interests~~ is registered as salesperson pursuant to Section 57-19 et seq. and these rules.

(b)(i) A project is not considered registered until the developer seeking registration obtains from the division:

- (A) a complete property report, approved by the division; and
- (B) an order of registration.

(ii) A salesperson is not considered registered until the individual receives a registration from the division.

(c) Absent the issuance of a property report or registration, acceptance by the division of a registration fee does not authorize a person to engage in the ~~marketing~~ ~~advertisement, offering, or sale~~ of interests.

(2) Registration procedure. A developer shall submit all information required under Subsection (3) to the division:

- (a) through the ATR; or
- (b) if the developer obtains advance permission from the division, directly to the division.

(3) Required Information. A developer shall submit to the division:

- (a) property report pursuant to Section 57-19-11 and Subsection R162-57a-11;
- (b) as to each officer, partner, director, and owner of the developer:
  - (i) as applicable, documentation of any disciplinary or adverse licensing action taken against a professional license held by the individual in any jurisdiction;
  - (ii)(A) a statement of the type and extent of any financial interest the individual has in the project; and
  - (B) an explanation of any options the individual may exercise to acquire additional financial interest in the project;
  - (iii) as applicable, court records from any criminal proceeding taken against the individual in any jurisdiction, regardless of whether the proceeding was resolved by:
    - (A) conviction;
    - (B) plea in abeyance;
    - (C) diversion agreement;
    - (D) sentence of confinement; or
    - (E) dismissal; and
  - (iv) as applicable, documentation of any bankruptcy filing

by:

- (A) the individual; or
- (B) an entity in which the individual has held:
  - (I) an ownership interest; or
  - (II) a position as a manager, officer, or director;
- (c) evidence that the developer is registered in good standing with the Utah Division of Corporations;
- (d) corporate resolution naming a resident agent to act on behalf of the developer;
- (e) copy of the current articles of incorporation or other instrument creating the developer entity;
- (f) copy of the current bylaws of the developer entity;

(g)(i) states or jurisdictions in which the developer has filed an application for registration or similar document;

(ii) copy of the property report or other disclosure document required to be given to purchasers by any jurisdiction in which the project is registered or the developer is otherwise authorized to ~~[market]~~ advertise, offer, or sell interests;

(iii) full documentation of any adverse order, judgment, or decree entered in connection with the project by any regulatory authority in any jurisdiction;

(h) name of any salesperson who will ~~[market]~~ offer or sell interests in the project;

(i) name of the individual who will be responsible for directly supervising the salesperson(s) ~~[marketing]~~ offering or selling interests in the project;

(j) legal description of the property upon which the project is located;

(k) statement, generated or updated within the 30-day period preceding the date of application, of the condition of the title to the property upon which the project is located, including encumbrances;

(l)(i) copy of any instrument by which the developer acquired interest in the project; or

(ii) if the developer does not hold fee title to the property, evidence that the developer is legally entitled to use the property, as follows:

(A) if the property is situated within Utah:

(I) a title opinion from a title insurer licensed in Utah; or

(II) an opinion letter from an independent, third party attorney actively licensed in Utah;

(B) if the property is situated outside of Utah[;];

(I) a title opinion from a title insurer licensed where the property is situated; or

(II) an opinion letter from an independent, third party attorney who is actively licensed to practice in the jurisdiction where the property is situated; and

(C) if the property is located in a jurisdiction such as a foreign country where property title opinions are issued by parties other than title companies and attorneys, other evidence of title as specified and approved by the director;

(m) copy of any instrument creating a lien, easement, restriction, or other encumbrance affecting the project, including any recording data, but redacted as to the consideration paid upon acquisition of the project;

(n) statement of the zoning and other governmental regulations affecting the use of the project;

(o) existing and proposed taxes or special assessments that affect the project;

(p)(i) copies of the instruments that will be delivered to a purchaser to evidence the purchaser's interest in the project; and

(ii) copies of the contracts and other agreements that a purchaser will be required to agree to or sign;

(q) topographic map and accompanying statement describing the general topography and physical characteristics of the project, including:

(i) terrain;

(ii) soil conditions;

(iii) flood control; and

(iv) climate;

(r) copy of any:

(i) recorded declaration of condominium;

(ii) recorded covenants, conditions, and restrictions (CCRs);

and

(iii) instrument governing the project and incorporating all covenants of the grantor or lessor;

(s) copy of any plan to create an association for project owners;

(t) narrative description of the promotional plan for the disposition of the project;

(u) statement disclosing any inducement that will be offered in connection with the ~~[marketing]~~ advertisement, offering, or sale of interests in the project;

(v) map showing:

(i) the location of the interests and other improvements on the property;

(ii) the relation of the project to existing streets, roads, and other off-site improvements; and

(iii) the relation of the project to factors that might negatively impact the quiet enjoyment of an interest;

(w)(i) statement of improvements and amenities to be installed that have not been completed;

(ii) schedule for completion;

(iii) evidence that the developer has obtained all necessary permits; and

(iv) if the city or county in which the property is located does not require means of assurance that all improvements and amenities referred to in the application will be completed, copies of:

(A) escrow or trust agreements;

(B) performance bonds; or

(C) other documentation to evidence that adequate financing is available and arrangements have been made for the installation of all streets, sewers, electricity, gas, water, telephone, drainage, and other improvements;

(x)(i) provisions for maintenance to both existing and planned improvements and amenities; and

(ii) estimated cost of such maintenance to purchasers;

(y) description of any corrective work that must be performed on or relating to the project before particular interests are suitable for use;

(z) completed application as required by the division; and

(aa) a nonrefundable registration fee.

(4) The director may waive production of an item required pursuant to Subsection (3) if the developer shows that the item is not necessary to fulfill the purposes of Section 56-19 et seq.

(5) Consolidation.

(a) An application for consolidation shall be prepared and submitted in the same format as an application for initial registration.

(b) Where there is no change in the information submitted by the developer for the initial registration, the documents required by Subsection (3) may be incorporated by reference to documents on file with the division.

(c) An incomplete application for consolidation shall be treated as provided in Subsection (6).

(d) New inventory added to a project through consolidation is subject to inspection by the division.

## (6) Notice of defect.

(a) If an application is incomplete, or otherwise fails to comply with Section 57-19 et seq. or these rules, the director shall send a notice of defect to the developer or the developer's legal representative specifying:

(i) what additional information is required to cure the defect; and

(ii) the deadline by which the division must receive the additional information.

(b) After receipt of a notice of defect, the developer may not offer units to the public:

(i) until the defect is cured and a registration obtained; or

(ii) without obtaining a temporary permit pursuant to Section 57-19-6(3) and Subsection (8).

(c)(i) If the additional information is not received by the division by the deadline specified in the notice of defect, the director may deny the registration.

(ii) An order of denial may be appealed pursuant to Section 57-19-17.

## (7) Standards for approval.

(a) The director may not approve an application for registration of a project unless:

(i) the documents submitted pursuant to Subsection (3) meet the requirements of Section 57-19 et seq. and these rules; and

(ii) the developer demonstrates the ability to convey or cause to be conveyed the interests offered for disposition.

(b) The division may not issue a project registration to a developer that has an officer, partner, director, or owner who has:

(i) been prosecuted for a felony that resulted in a:

(A) conviction within the five-year period preceding the date of application;

(B) plea agreement within the five-year period preceding the date of application; or

(C) jail or prison release date falling within the five-year period preceding the date of application; or

(ii) been prosecuted for a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in a:

(A) conviction within the three-year period preceding the date of application; or

(B) jail or prison release date falling within the three-year period preceding the date of application.

(c) If the director determines that a registration application and supporting documentation meet the criteria for registration, the division shall issue:

(i) an order of registration designating the form of the property report that the developer is required to provide to a prospective purchaser pursuant to Section 57-19-11;

(ii) a property report cover sheet, which the developer shall attach to the property report as its first page; and

(iii) a receipt for property report, which the developer shall attach to the property report as its last page.

## (8) Temporary permit.

(a) To apply for a temporary permit, a person shall:

(i) make application by submitting a written request to the director;

(ii) comply with Section 57-19-6(3); and

(iii) pay all fees required for registration.

(b) A temporary permit issued by the director is valid for a period of 30 days from the date of issue.

(c) A temporary permit may not be renewed.

## (9) Notification of changes.

(a) A developer whose project is registered under Section 57-19 et seq. shall report to the division within 10 business days any change in:

(i) the developer's contact information;

(ii) the disclosures required under Section 57-19-11;

(iii) the information provided under this Subsection (3), including changes in salespersons employed or contracted to ~~market~~ advertise, offer, or sell interests in the project;

(iv)(A) the bankruptcy of an entity controlled or owned by the developer that engages in the ~~marketing~~ advertisement, offering, or sale of interests; and

(B) if the developer is an individual, the filing of a personal bankruptcy;

(v) the suspension, revocation, surrender, cancellation, or denial of a professional license or professional registration issued to the developer, whether the license or registration is issued by this state or another jurisdiction;

(vi) the entry of a cease and desist order, a temporary or permanent injunction, or a regulatory action:

(A) against the developer by a court or a government agency; and

(B) based on:

(I) conduct or a practice involving the ~~marketing~~ advertisement, offering, or sale of interests; or

(II) conduct involving fraud, misrepresentation, or deceit; and

(vii) a finding of fraud, misrepresentation, or deceit entered against the developer in a judicial or administrative proceeding instituted by a purchaser and arising out of or relating to:

(A) the advertising or sale of an interest;

(B) disclosures required under Section 57-19-11; or

(C) rescission rights.

(b) If a deadline for notification falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

## (10) Amendment and supplement to initial registration.

(a) To submit an amendment to a registration, a developer shall:

(i) complete an amendment filing through the ATR; or

(ii) obtain prior permission from the division to submit the information by mail.

(b) To submit a supplement to a registration, a developer shall:

(i) complete a courtesy filing through the ATR; or

(ii) obtain prior permission from the division to submit the information by mail.

(c) Pursuant to Section 57-19-8(4), the certification of a class in a class-action lawsuit against a developer on the basis of the developer's advertising, selling, or managing a project or interest requires the filing of an amendment.

**R162-57a-13. Unprofessional Conduct.**

(1) Developer.

(a) Affirmative duties. A developer or an individual designated by the developer shall:

(i) actively supervise project salesperson(s) to ensure compliance with Section 57-19 et seq. and these rules;

- (ii) provide the complete property report to each prospective purchaser pursuant to Subsection R162-57a-11(2)(b)(i);
  - (iii) obtain a signed receipt for property report from a prospective purchaser prior to:
    - (A) executing a purchase agreement; or
    - (B) receiving any item of value toward the purchase of an interest; and
  - (iv)(A) clearly inform a purchaser of the purchaser's right to rescind the agreement if, during the rescission period mandated by Section 57-19-12, the purchaser expresses a desire to terminate a contract or agreement entered into by the purchaser; and
    - (B) ensure compliance with this Subsection (iv)(A) by:
      - (I) all subsidiaries of the developer;
      - (II) all persons affiliated with the developer; and
      - (III) all persons affiliated with a subsidiary of the developer.
- (b) Prohibited conduct. A developer is subject to discipline if the developer or an affiliated person:
- (i) makes a misrepresentation or material omission in a document submitted to the division; or
  - (ii) fails to comply with an order of the division.
- (2) Salesperson. A salesperson shall comply with:
- (a) Section 57-19 et seq.;
  - (b) these rules; and
  - (c) this Subsection (1)(a)(ii)-(iv).

**KEY: timeshare, camp resort, registration, professional conduct**  
**Date of Enactment or Last Substantive Amendment: [~~August 21, 2012~~2013]**  
**Authorizing, and Implemented or Interpreted Law: 57-19-3; 57-19-5 through 57-19-26**

Health, Disease Control and  
 Prevention, Environmental Services  
**R392-100**  
 Food Service Sanitation

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 37083  
 FILED: 11/30/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The rule has been amended to remove redundant language concerning food handler requirements. All food handler requirements will now be located in one new Rule R392-102, Food Handler Training and Certification, which is also being filed at this time. This requirement will now be clarified in more detail in the new Rule R392-102. (DAR NOTE: The proposed new Rule R392-102 is under DAR No. 37084 in this issue, December 15, 2012, of the Bulletin.)

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendment removes the statement that "food employees shall be trained in food safety as required under 26-15-5 and

shall hold a valid food handler's card issued by a local health department." Food handler requirements will be found in the new Rule R392-102, when enacted. This requirement is clarified in more detail in the new rule which is being filed at the same time as this amendment.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-15-5

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There will be no anticipated costs or savings to the state budget removing this language from this rule. All food handler requirements will now be in the new Rule R392-102. A cost analysis of the new rule is located on the associated change form to Rule R392-102 which is being filed at the same time as this amendment.
- ◆ **LOCAL GOVERNMENTS:** There will be no anticipated costs or savings to local government removing this language from this rule. All food handler requirements will now be in the new Rule R392-102. A cost analysis of the new rule is located on the associated change form to Rule R392-102 which is being filed at the same time as this amendment.
- ◆ **SMALL BUSINESSES:** There will be no anticipated costs or savings to small business removing this language from this rule. All food handler requirements will now be in the new Rule R392-102. A cost analysis of the new rule is located on the associated change form to Rule R392-102 which is being filed at the same time as this amendment.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no anticipated costs or savings to those in this category removing this language from this rule. All food handler requirements will now be in the new Rule R392-102. A cost analysis of the new rule is located on the associated change form to Rule R392-102 which is being filed at the same time as this amendment.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be no anticipated costs or savings to affected persons removing this language from this rule. All food handler requirements will now be in the new Rule R392-102. A cost analysis of the new rule is located on the associated change form to Rule R392-102 which is being filed at the same time as this amendment.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule is repealed and replaced by a proposed new Rule R392-102. No fiscal impact is expected on business as a result of this amendment.

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

HEALTH  
 DISEASE CONTROL AND PREVENTION,  
 ENVIRONMENTAL SERVICES  
 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:**

◆ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at [rmarsden@utah.gov](mailto:rmarsden@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 01/22/2013

AUTHORIZED BY: David Patton, PhD, Executive Director

**R392. Health, Disease Control and Prevention, Environmental Services.**

**R392-100. Food Service Sanitation.**

**R392-100-1. Authority and Purpose.**

(1) This rule is authorized by Subsections 26-1-30(2), and 26-15-2.

(2) This rule establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, permit issuance, inspection, employee restriction, and permit suspension to safeguard public health and provide consumers food that is safe, unadulterated, and honestly presented.

**R392-100-2. Incorporation by Reference.**

(1) The requirements as found in the U.S. Public Health Service, Food and Drug Administration, Food Code 2009, Chapters 1 through 8, Annex 1, and Annex 2, Federal Food, Drug, and Cosmetic Act, 21, U.S.S. 342, Sec. 402 are adopted and incorporated by reference, with the exclusion of Sections 8-302.14(C)(1) and (2),(D) and (E), 8-905.40, and 8-909.20; and

(2) with the following additions or amendments:

(a) In section 1-201.10, insert a new paragraph after paragraph (2) under Core Item to read: "(3) 'Core Item' will also be referred to as 'non-critical' in the state rule."

(b) In section 1-201.10 under Priority Item, replace the semicolon and the word "and" at the end of paragraph (2) with a period; replace the period at the end of paragraph (3) with "; and"; and insert a new paragraph after paragraph (3) to read: "(4) 'Priority Item' will also be referred to as 'critical 1' in the state rule."

(c) In section 1-201.10 under Priority Foundation Item, replace the semicolon and the word "and" at the end of paragraph (2) with a period; replace the period at the end of paragraph (3) with "; and"; and add a new paragraph after paragraph (3) to read: "(4) 'Priority foundation item' will also be referred to as 'critical 2' in the state rule."

(d) After section 2-102.11 paragraph (17), add a new section to read: "2-102-12 Food Employee Training. Food managers shall be trained and certified as required under 26-15a and R392-101.1.

~~Food employees shall be trained in food safety as required under 26-15-5 and shall hold a valid food handler's card issued by a local health department."~~

(e) After section 4-204-123 paragraph (B), add a section to read: "4-204.124 Restraint of Pressurized Containers.

Carbon dioxide, helium or other similar pressurized containers must be restrained or secured to prevent the tanks from falling over."

(f) At the end of section 5-101.12, add: "The process shall be in accordance with the American Water Works Association (AWWA) C651-2005 for disinfection and testing."

(g) At the end of section 5-202.13, add: "Where the distance to the adjacent wall is closer than three pipe diameters, the air gap shall not be less than 1-1/2 inch."

(h) After the the reference to the section number "5-202.13" in section 5-203.15 paragraph (A), delete the article "a" and insert: "an American Society of Safety Engineers (ASSE) 1022".

(i) After the reference to paragraph (B) in section 5-402.11 paragraph (A), delete the coma; insert the word "and"; and delete the text, ", and (D)" that follows the reference to paragraph (C).

(j) Delete paragraph (D) from section 5-402.11.

(k) Amend section 8-103.10 to read:

"8-103.10 Modifications and Waivers.

(A) The regulatory authority may grant a variance by modifying or waiving the requirements of this Code if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under section 8-103.11 in its records for the food establishment.

(B) A variance or waiver issued by the regulatory authority and the documentation required in section 8-103.11 must be copied to the Utah Department of Health, Office of Epidemiology, Environmental Sanitation Program within 5 working days of issuance.

(C) A variance or waiver intended for a food establishment which is of a chain with stores in more than one local health jurisdiction in the State must be approved by the Utah Department of Health prior to issuance."

(l) Amend section 8-103.11 to add:

"(D) In addition, a variance from section 3-301.11 may be issued only when:

(1) the variance is limited to a specific task or work station;

(2) the applicant has demonstrated good cause why section 3-301.11 cannot be met;

(3) suitable utensils are used to the fullest extent possible with ready-to-eat foods in the rest of the establishment; and

(4) the applicant can demonstrate active management control of this risk factor at all times."

(m) Amend Section 8-302.14 (C) to read:

"A statement specifying whether the food establishment is mobile or stationary and temporary or permanent."

(n) Amend section 8-302.14 to renumber (F) to (D), (G) to (E), and (H) to (F).

(o) Amend section 8-304.10 paragraph (A) to read:

"(A) Upon request, the regulatory authority shall provide a copy of the food service sanitation rule according to the policy of the local regulatory agency."

(p) Amend section 8-401.10 paragraph(A) to read:

"(A) Except as specified in paragraphs (B) and (C) of this section, the regulatory authority shall inspect a food establishment at least once every 6 months and twice in a season for seasonal operations."

(q) Amend section 8-401.10 paragraph (B) subparagraph (2) to read:

"The food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction; or"

(r) Amend section 8-501.10 paragraph (B) to read:

"(B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee; and"

(s) Add a paragraph after 8-501.10 paragraph (B) to read:

"(C) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703."

(t) Amend section 8-601.10 to read:

"Due process and equal protection shall be afforded as required by law in all enforcement and regulatory actions."

(u) Amend section 8-801.30 to read:

"Service is effective at the time the notice is served or when service is made as specified in section 8-801-20 paragraph (B)."

(v) Amend section 8-903.10 to read:

"8-903.10 Impoundment of Adulterated Food Products Authorized.

(A) The impoundment of adulterated food is authorized under Section 26-15-9, UCA.

(B) The regulatory authority may impound, by use of a hold order, any food product found in places where food or drink is handled, sold, or served to the public, but is found or is suspected of being adulterated and unfit for human consumption.

(C) Upon five days notice and a reasonable opportunity for a hearing to the interested parties, to condemn and destroy the same if deemed necessary for the protection of the public health.

(D) If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the regulatory authority may remove the food that is subject to the hold order to a place of safekeeping."

(w) Amend section 8-903.60 to read:

"The regulatory authority may examine, sample, and test food in order to determine its compliance with this Code in section 8-402.11."

(x) Amend section 8-903.90 to read:

"The regulatory authority shall issue a notice of release from a hold order and shall physically remove the hold tags, labels, or other identification from the food if the hold order is vacated."

(y) Amend section 8-904.30 number/catchline to read:

"8-904.30 Contents of the Summary Suspension Notice."

(z) Amend section 8-905.10 paragraph (A) to read:

"(A) A person who receives a notice of hearing shall file a response within 10 calendar days from the date of service. Failure to respond may result in license suspension, license revocation, or other administrative penalties."

(aa) Amend section 8-905.20 to read:

"A response to a hearing notice or a request for a hearing as specified in section 8-905.10 shall be in written form and contain the following:

(A) Response to a notice of hearing must include:

(1) An admission or denial of each allegation of fact;

(2) A statement as to whether the respondent waives the right to a hearing;

(3) A statement of defense, mitigation, or explanation concerning all claims; and

(4) A statement as to whether the respondent wishes to settle some or all of the claims made by the regulatory authority.

(B) A request for hearing must include:

(1) A statement of the issues of fact specified in section 8-905.30 paragraph (B) for which a hearing is requested; and

(2) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.

(C) Witnesses - In addition to the above requirements, if witnesses are requested, the response to a notice of hearing and a request for hearing must include the name, address, telephone number, and a brief statement of the expected testimony for each witness.

(D) Legal Representation - Legal counsel is allowed, but not required. All documents filed by the respondent must include the name, address, and telephone number of the respondent's legal counsel, if any."

(ab) Amend section 8-905.50 paragraph (A)(1) to read:

"(1) Except as provided in paragraph (B) of this section, within 5 calendar days after receiving a written request for an appeal hearing from:

(ac) Adopt subsections 8-905.50 paragraphs(A)(1)(a) through (c) without changes.

(ad) Amend subsection 8-905.50 paragraph(A)(2) to read:

"(2) Within 30 calendar days after the service of a hearing notice to consider administrative remedies for other matters as specified in section 8-905.10(C) or for matters as determined necessary by the regulatory authority."

(ae) Amend section 8-905.60 number/catchline to read:

"8-905.60 Notice of Hearing Contents."

(af) Amend section 8-905.80 number/catchline to read:

"8-905.80 Expedient and Impartial Hearing."

(ag) Amend section 8-905.90 number/catchline to read:

"8-905.90 Confidentiality of Hearing and Proceedings."

(ah) Amend section 8-905.90 paragraph (A) to read:

"(A) Hearings will be open to the public unless compelling circumstances, such as the need to discuss a person's medical or mental health condition, a food establishment's trade secrets, or any other matter private or protected under federal or state law."

(ai) Delete section 8-905.90 subparagraphs (A)(1) and (2).

(aj) Amend section 8-906.30 paragraph (B) to read:

"(B) Unless a party appeals to the head of the regulatory authority within 10 calendar days of the hearing or a lesser number of days specified by the hearing officer:"

(ak) Adopt subsection 8-906.30 paragraphs (B)(1) through (2) without changes.

(al) Amend section 8-907.60 to read:

"Documentary evidence may be received in the form of a copy or excerpt if provided to the hearing officer and opposing party prior to the hearing as ordered by the hearing officer."

(am) Amend section 8-908.20 to read:

"Respondents accepting a consent agreement waive their rights to a hearing on the matter, including judicial review."

(an) Amend section 8-911.10 paragraph (B) to read:

"(B) Any person who violates any provision of this rule may be assessed a civil penalty as provided in section 26-23-6."

(ao) Delete subparagraphs (B)(1) and (2) of section 8-911.10.

(ap) Amend section 8-913.10 number/catchline to read:

"8-913.10 Petitions, Penalties, Contempt, and Continuing Violations."

(aq) Amend section 8-913.10 paragraph (B) to replace the phrase "(designate amount)" with the phrase, "\$5,000".

(ar) Add paragraph 8-913.10(D) to read:

"(D) The adjudicative body, upon proper findings, shall assess violators a fee for each day the violation remains in contempt of its order."

(3) All parts of the food establishment shall be designed, constructed, maintained, and operated to meet the standards of the state construction code adopted by the Utah Legislature. A copy of the construction code is available at the office of the local building inspector.

**KEY: public health, food services, sanitation**

**Date of Enactment or Last Substantive Amendment:**  
[September 10, 2012]2013

**Notice of Continuation: January 20, 2012**

**Authorizing, and Implemented or Interpreted Law: 26-1-30(2); 26-15-2**

## Health, Disease Control and Prevention, Environmental Services **R392-102** Food Handler Training and Certification

### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 37084

FILED: 11/30/2012

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Under the previous subsection, R392-100-2(2)(d), which is proposed for removal by a simultaneous filing, food handler safety programs were largely under the control of each local health department. This was largely based on their authority to act to protect the safety of food as authorized by statute. For example, see Subsection 26A-1-106(3)(d). Regulated entities raised a concern about the lack of uniformity, among other issues. This rule, after input from those entities, Legislators and local health departments, proposes a statewide, uniform approach that addresses the need to protect food safety. Food handler training and certification requirements are addressed by this rule. Minimum food handler training and certification requirements are established. The process is established that food handlers will follow to receive training and be certified as food handlers. Private business will be allowed to play a

significant role in this process, while the indispensable role of local and state public health officials to monitor and oversee this process is maintained. The authority of local health departments to fund their monitoring and oversight functions by fees, pursuant to county ordinance or interlocal agreement as set forth in Subsection 26A-1-114(1)(h), is maintained, if the fee is standard and uniform across the state. These fees are set in a transparent, accountable fashion, after public hearing and approval by local elected officials.

**SUMMARY OF THE RULE OR CHANGE:** Section R392-102-1 outlines the known risks to the public from improper handling of food by food handlers or poor personal hygiene of food handlers. A uniform, statewide process to address these risks is proposed. In Section R392-102-2, changes are made to definitions of key terms, including making it clear that food handler cards are valid statewide, as well as the important role of private business in this process. In Section R392-102-3, the procedure for issuing statewide recognition through reciprocity, and renewal of food handler cards is changed. Cards are valid for three years. Cards will be issued without requiring food handlers to travel to the local health department offices. Between certification by the testing organization and issuance of the card, food handlers may work for up to 14 days. In Section R392-102-4, the rule shows the suspension or revocation procedures for cards. In Section R392-102-5, food handler training requirements are detailed, including the role of private business in this process. In Section R392-102-6, examination requirements including recognition of ANSI approved tests that are tailored to meet Utah's standards. Use of the state questions is allowed. An option to approve a different set of questions is permitted, at the expense of the entity making the proposal. In Section R392-102-7, registration, approval, and monitoring of food handler providers is changed. Approval is valid for five years.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-15-5 and Subsection 26-1-30(2) and Subsection 26A-1-114(1)(h)

### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There will be an increase in workload at the Department to administer this program, but the costs will be covered by existing funding.

◆ **LOCAL GOVERNMENTS:** There may be a reduction in fees received for training at some local health departments as private food handler training programs replace training which has been provided by local health departments. Fees received for issuing of food handler cards should remain neutral, if not lower, as the renewal frequency has been uniformly set at three years, where the frequency previously varied.

◆ **SMALL BUSINESSES:** There is a potential for small businesses to increase their revenue from training as they compete in the new market authorized by this rule. Although the rule does not require that a provider use their own test, there will be a cost of approximately \$500 to \$1,000 every five years to certify their test if the provider chooses this

option. This will be paid to an outside vendor as required by rule.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is potential for large businesses to increase their revenue from training as they compete in the new market authorized by this rule. Although the rule does not require that a provider use their own test, there will be a cost of approximately \$500 to \$1,000 every five years to certify their test if the provider chooses this option. This will be paid to an outside vendor as required by rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The implementation of this rule will mean a shift in financial streams for all parties currently involved in food handler training and certification as it is anticipated that the private industry market portion will increase for the training required. The costs for training will be market driven and not restrained or mandated by this rule. Costs to individuals for issuance of food handler cards should be unchanged.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Moving from a food handler training, testing, and certification process that was somewhat different from county to county should have a positive impact on businesses that operate in more than one county. This rule requires that the process be uniform statewide and that cards be valid for three years and be accepted throughout the state. The vital role of local and state public health officials to protect food safety is maintained. The ability of local health officials to fund those necessary activities by properly adopted, uniform fees is allowed, but not mandated. No significant negative fiscal impact on business, small or otherwise is anticipated. Public input during the comment period, which will not be closed until the 2013 General Session of the Legislature has adjourned, will be carefully evaluated.

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

HEALTH  
DISEASE CONTROL AND PREVENTION,  
ENVIRONMENTAL SERVICES  
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:

◆ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at [rmarsden@utah.gov](mailto:rmarsden@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/15/2013

THIS RULE MAY BECOME EFFECTIVE ON: 03/25/2013

AUTHORIZED BY: David Patton, PhD, Executive Director

**R392. Health, Disease Control and Prevention, Environmental Services.**

**R392-102. Food Handler Training and Certification.**

**R392-102-1. Purpose.**

(1) This rule requires that food handler training, testing, certification and fees follow uniform statewide standards.

(2) The Centers for Disease Control and Prevention has identified five risk factors associated with food-borne illness outbreaks. Four of the five risk factors result from improper handling of food by food handlers or poor personal hygiene of food handlers.

(3) Proper training allows food handlers the ability to apply the knowledge gained to prevent food borne diseases. Testing of food handlers confirms that knowledge of correct food handling techniques was gained. A food handler card, which will be accepted statewide, provides a tool for the Department to certify that food handlers have received state standardized training and testing.

(4) Local monitoring of this process is critical to protect the public. Coordination between this process and inspection of regulated facilities, is necessary to quickly and effectively respond to identified risks. Recognizing the essential work of local public health officials, with their close accountability to local elected officials, maintains local control and responsiveness to local concerns.

(5) The authority of local health departments to fund their monitoring and oversight functions by fees, pursuant to county ordinance or interlocal agreement as set forth in Section 26A-1-114(1)(h), is maintained, if the fee is standard and uniform across the state.

**R392-102-2. Definitions.**

(1) "Department" means the Utah Department of Health.

(2) "Executive Director" means the Executive Director of the Utah Department Of Health or designated representative.

(3) "Food handler" means any person working part-time or full-time in a food establishment as defined in R392-100, who moves food or food containers, prepares, stores, or serves food; comes in contact with any food, utensil, tableware or equipment; or washes the same. The term also includes owners, supervisors, management persons, and any other person working in a food-service establishment. The term also includes any operator or person employed by one who handles food dispensed through vending machines; or who comes into contact with food contact surfaces or containers, equipment, utensils, or packaging materials used in connection with vending machine operations; or who otherwise services or maintains one or more vending machines.

(4) "Food Handler Card" means a card issued by the local health department to a person after taking a course offered by a registered food handler training provider and passing a test which meet the standards of this rule and which gives the person the right to handle food in food establishments in the state.

(5) "Food Handler Certification" means the documentation of the completion of food handler training and passing of the state approved test before a food handler card is issued.

(6) "Independent Education Expert" means a person who has received training and has a graduate degree from an accredited University with a certification in psychometrics.

(7) "Local Health Officer" means the director of the jurisdictional local health department as defined in 26A, Chapter 1, or his designated representative.

(8) "Registered Food Handler Training Provider" means an entity, private or public, that has registered with the Department to offer food handler training, testing, and certification of food handlers.

**R392-102-3. Food Handler Card Issuing Procedure, Reciprocity, and Renewal.**

(1) All food handlers must have a valid food handler card issued by a local health officer in the local health district where the food handler resided at the time of certification. The local health officer shall issue a food handler card by mail or in person to all food handlers certified by a registered food handler training provider unless R392-102-4(1)(a) or (b) applies. Registered food handler training providers shall certify food handlers with a certificate issued to the food handler and the transmission of an electronic notification of the certification to a local health department. Certification notification must be sent to the local health department within 5 business days after testing is completed.

(2) Food handler cards issued under authority of this rule shall be accepted statewide by all local health departments until the date of expiration, revocation, or suspension of the food handler card.

(3) If a local health department imposes a fee, pursuant to Section 26a-1-114(1)(h), for the verification of certification, the issuance of the food handler card, or other costs associated with administering this program, the fee shall be collected by the food handler training provider and conveyed to the local health department in the county where the food handler resides along with the certification notification set forth in R392-102-3(1).

(4) Food handler cards issued shall be uniform statewide and contain the following information:

- (a) "Utah Food Handler Card" as the title;
- (b) Name of the food handler;
- (c) Expiration Date;
- (d) Identification number which begins with a two letter unique identifier of the training provider and up to 6 characters following the two letter identifier;
- (e) Name of health department who issued the card;
- (f) "This Card is Not a Legal Form of Identification" stated at the bottom of the card;

(g) Utah State seal; and

(h) On the back of the card, the following information must be presented:

(i) Card must be presented upon request by the health authority;

(ii) Card may be revoked for cause; and

(iii) No other food handler card is approved in the State of Utah.

(5) Except when Subsections R392-102-3(8) through (10) apply, a food handler must possess a valid food handler card issued by a local health officer before being allowed to handle food for the public.

(6) With the exception of temporary events, food service establishments shall have a copy of the food handler card of each employee that works in the establishment on file. If the food handler is working at a temporary event, the food handler must have

a food handler card to show to the health authority, if asked, but does not have to have a copy of the card in an establishment file.

(7) Food handler cards shall be valid for 3 years from the date of issuance. Food handler cards must be renewed every 3 years by completing an approved food handler training course, passing an exam administered by an approved registered food handler testing provider, and receiving a food handler card from the local health department.

(8) A food service employee who has a food handler training certification that has been submitted to the local health department may handle food during a short interim period not to exceed 14 days while the food handler card application is being processed.

(9) An individual certified as a food safety manager under R392-101 shall be exempt from Subsection R392-102-3(5).

(10) The local health officer shall accept a food handler card issued to a back country outfitter by the United States Department of the Interior, or by a public health authority in Arizona, Colorado, Idaho, Nevada, or Wyoming. This applies only to food handling done at a back country food establishment that meets the exemption requirements of Section 26-15a-105(1)(i).

**R392-102-4. Suspension or Revocation of Food Handler Cards.**

(1) The local health officer may revoke or suspend a food handler card if:

(a) A food handler is ill with a food transmissible disease and is handling food or

(b) If two or more inspections within two years document that a food handler has at least twice failed to apply the same learning objective listed in R392-102-5.

(2) The local health department may confiscate any food handler card which cannot be authenticated by a local health department.

**R392-102-5. Food Handler Training Requirements.**

(1) A food handler training course offered by registered food handler training providers must provide education focused on Utah Rule R392-100 (which incorporates the FDA national model food code standard), and shall contain information regarding the illness prevention risk factors and the bulleted learning objectives as listed below each risk factor in R392-102-5(1)(a) through (e):

(a) Proper hot or cold holding temperatures of food which requires time or temperature control for safety;

(i) List the temperature danger zone,

(ii) Describe the correct procedure for holding cold foods and hot foods.

(iii) List the appropriate temperatures for refrigerators, freezers and steam tables.

(iv) Identify the hazards of leaving potentially hazardous foods (foods that require time or temperature controls for safety, TCS) at room temperature.

(v) Define potentially hazardous foods (foods that require time or temperature controls for safety, TCS).

(vi) List the population groups that are the most vulnerable to food-borne illness.

(vii) Discuss how bacterial growth occurs in food.

(viii) Identify the most common causes of food-borne illness.

(ix) List sources of microbes.

\_\_\_\_\_ (b) Proper cooking, reheating, and cooling temperatures of food:

\_\_\_\_\_ (i) List the required final cook temperatures for foods.  
\_\_\_\_\_ (ii) List the final temperature for reheating leftovers.  
\_\_\_\_\_ (iii) Describe the relationship between cooking time and temperature in killing microorganisms.

\_\_\_\_\_ (iv) Describe the steps used to cool food rapidly.  
\_\_\_\_\_ (v) Describe the proper procedure to thaw frozen foods.

\_\_\_\_\_ (c) Control of dirty or contaminated utensils and equipment including prevention of cross contamination and proper ware washing and sanitizing:

\_\_\_\_\_ (i) Discuss how a food handler might contaminate food.  
\_\_\_\_\_ (ii) Define cross-contamination.  
\_\_\_\_\_ (iii) List the possible sources of cross-contamination when handling food.

\_\_\_\_\_ (iv) Identify the steps to prevent cross-contamination.  
\_\_\_\_\_ (v) Stress the importance of eliminating bare-hand contact with ready-to-eat food through utensils or gloving.

\_\_\_\_\_ (vi) Define cleaning and sanitizing and correct procedures for each.

\_\_\_\_\_ (vii) Identify the chemicals that can be used to clean and sanitize food-contact surfaces.

\_\_\_\_\_ (viii) Describe the correct concentration of cleaning and sanitizing solutions used on food-contact surfaces and how to test the concentrations.

\_\_\_\_\_ (ix) Identify when surfaces should be cleaned and sanitized.

\_\_\_\_\_ (x) Describe the correct procedures to use and store chemicals.

\_\_\_\_\_ (xi) Describe the 3-sink method of cleaning and sanitizing pots and pans and how to correctly dry dishes.

\_\_\_\_\_ (xii) Describe the correct procedure for cleaning and sanitizing using a dishwasher.

\_\_\_\_\_ (xiii) Proper cleaning and sanitizing steps.

\_\_\_\_\_ (xiv) Describe the correct procedures for storing dishes and utensils.

\_\_\_\_\_ (xv) Describe the correct procedures to handle trash and garbage.

\_\_\_\_\_ (d) Employee health and hygiene requirements including food-borne illness prevention training:

\_\_\_\_\_ (i) List the personal hygiene practices that the food handler can take to prevent food contamination.

\_\_\_\_\_ (ii) Describe the steps necessary for proper handwashing and when a double handwash is required.

\_\_\_\_\_ (iii) Describe how hands become contaminated and when and where handwashing should occur.

\_\_\_\_\_ (iv) List appropriate clothing and hair restraints.

\_\_\_\_\_ (v) List the illness symptoms that must be reported to the manager.

\_\_\_\_\_ (vi) Describe the correct procedures to prevent food-borne illness from a cut, burn or other wound.

\_\_\_\_\_ (vii) Describe under what conditions an employee may eat, drink or use any form of tobacco and the precautions to take after these activities.

\_\_\_\_\_ (viii) Define a food-borne illness.

\_\_\_\_\_ (ix) State how often a food handler card has to be renewed.

\_\_\_\_\_ (e) Using food from only approved sources.

\_\_\_\_\_ (i) Identify the correct procedure for storing and rotating stock.

\_\_\_\_\_ (2) Registered food handler training providers shall add training objectives and topics which the Department identifies by rule as being a cause of a food-borne illness outbreak or serious threat to the health of food service facility patrons.

\_\_\_\_\_ (3) The registered food handler training provider must maintain a list of past and current trainers denoting the dates the trainer taught food handler courses. The trainer list must be available for audit by the Department. On-line trainers must maintain a list of which course version is taught on-line by date.

\_\_\_\_\_ (4) Each time a food handler card is renewed, the food handler must take a training course before they may take a food handler test.

### **R392-102-6. Examination Requirements.**

\_\_\_\_\_ (1) Tests that have been approved by the American National Standards Institute under standard ANSI/ASTM E2659-09 are approved if documentation is provided to the Department that the test is based on R392-100 and meets the requirements of R392-102-5(1)(a) through (e).

\_\_\_\_\_ (2) A food handler training provider may use the bank of food handler test questions issued by the Department. The test must contain a minimum of 30 questions with the following number of questions from each of the risk factors listed in R392-102-5(1)(a) through (e)(if a test contains more than 30 questions, then the proportion of the questions for each category shall be the same as provided in (a) through (e)):

\_\_\_\_\_ (a) Seven questions from proper hot or cold holding temperatures of food and associated microbiology;

\_\_\_\_\_ (b) Five questions from proper cooking, reheating, and cooling requirements of food;

\_\_\_\_\_ (c) Ten questions from control of dirty or contaminated utensils and equipment, including prevention of cross contamination, and proper ware washing and sanitizing;

\_\_\_\_\_ (d) Seven questions from employee health and hygiene requirements including food-borne illness training; and

\_\_\_\_\_ (e) One question from using food from only approved sources.

\_\_\_\_\_ (3) The provider may also request approval of a different bank of test questions. For approval, the food handler training provider shall submit to the Department the proposed bank of at least 100 test questions organized by the required learning objectives listed in this rule. There shall be at least two questions in the pool from each of the associated objectives listed under the risk factors in Subsection R392-102-5(1)(a) through (e). In addition, the training provider shall contract with an independent education expert approved by the Department. The independent education expert shall analyze a food handler testing provider's bank of test questions to effectively measure the applicant's knowledge of the learning objectives outlined in this rule and assure the questions meet the expert's testing standards for question structure. The training provider shall be responsible for the costs of the independent education expert's evaluation. The Department must approve any change in the provider offered test question bank before implementation. The Department may not issue approval of a food handler training provider that uses their own bank of test questions until the independent education expert provides a positive recommendation for use of the test to the Department.

(4) The Department may require changes to the test questions if the Department finds that the questions inadequately test the learning objectives. Food handler training providers shall update the test questions used within thirty (30) days of written notice of the change.

(5) A person must answer at least 70% of the questions correctly to pass the examination and be eligible to receive a food handler card.

(6) A food handler examination offered by training providers may be written or on-line. Oral exams may also be conducted individually when circumstances require it such as when an applicant's language or reading abilities interfere with taking a written or an on-line test. Registered food handler training providers must include in their operating plan procedures to ensure that the person taking the exam is the same person who is certified.

(7) Food handler training providers must routinely rotate test questions from the test question bank, the order of questions in tests, and the order of multiple choice answers in questions to discourage cheating.

(8) Training providers shall:

(a) Institute procedures in their operating plan to ensure that cheating on examinations does not take place. Training providers shall ensure that exams are protected from being compromised, protected from unauthorized access, and available to candidates only during test time. If testing is done over the internet, registered food handler training providers must submit documentation to the Department on request regarding the security measures taken to ensure the person taking the exam is the same person receiving the training certificate.

(b) Maintain records of each candidate's name, date of birth, gender, date of examination, and name of instructor for at least three years and provide this to a local health department. This must be provided to the local health department within whose jurisdiction the applicant lives within 5 business days as required in R392-102-3(1).

#### **R392-102-7. Food Handler Training Provider Registration, Approval, and Auditing.**

(1) A provider must offer both training and testing to be registered. All food handler training providers must first register with the Department before they may offer food handler training and testing in the state. All food handler training providers that have been approved by the Department or a Utah local health department before the effective date of this rule may continue to provide food handler training and testing for six months from the effective date of this rule. After six months, the food handler training providers must be registered with the Department and use the Department bank of test questions, have their test approved by an independent education expert, or submit documentation of ANSI certification per R392-102-6(1).

(2) As part of the registration process, the Department shall provide food handler training providers a copy of this rule. To be registered the training providers must sign an affidavit provided by the Department that states the provider will comply with the requirements of this rule and shall abide by confidentiality agreements if the provider chooses to use the Department provided test. The provider must present to the Department at the time of registration a summary of how the training program meets the training objectives contained in R392-102-5.

(3) Food handler training providers shall submit to the Department the provider's bank or pool of test questions that meet the requirements of 392-102-6 unless the provider chooses to use the state bank of questions.

(4) Food handler training providers must re-register with the Department every five years. The provider shall follow the requirements of R392-102-7(2) for re-registration.

(5) Registered food handler training providers are subject to Department audit to determine compliance with this rule. Registered food handler training providers shall cooperate with Department auditors by providing needed course training materials, on-line access to training sites, and test materials to allow an adequate audit. The Department may conduct audits either at random or on a complaint basis to determine compliance with the requirements of this rule.

(6) If a registered food handler training provider is found to be non-compliant during an audit, the registration shall be revoked, and the provider shall cease offering training classes and food handler certifications until the approved Department corrective action is taken to correct the violation. Until the violation is corrected, the certification of food handlers by this food handler training provider shall not be accepted for the issuing of food handler cards by the local health officer from the date the registered food handler training provider was found to be non-compliant.

(7) Registered food handler training providers shall comply with the Americans with Disability Act (ADA) access requirements irrespective of the size of the training operation.

**KEY: public health, food services, food handler permits, food handler certification**

**Date of Enactment or Last Substantive Amendment: 2013**

**Authorizing, and Implemented or Interpreted Law: 26-1-30(2); 26-15-5; 26A-1-114(1)(h)**

## Health, Disease Control and Prevention, Environmental Services

### **R392-302-3**

#### General Requirements

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

(Amendment)

DAR FILE NO.: 37072

FILED: 11/23/2012

#### **RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The rule change is intended to refine the scope of the rule to exclude bodies of water such as wake boarding ponds that were never intended to be included in the rule.

**SUMMARY OF THE RULE OR CHANGE:** Only Section R392-302-3 has been amended. The change clarifies the scope of the rule by excluding any pool that is over 30,000 square feet and that is also not designed for activities that

swimming pools are normally designed for such as swimming.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-15-2

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The change doesn't add or remove any activities performed by state government so there would be no cost or savings.

◆ LOCAL GOVERNMENTS: Wake boarding parks are becoming more popular. These types of bodies of water might be construed to fall under the pool rule and thus would need to be regulated by local health departments unless this proposed amendment is enacted. Excluding these types of bodies of water would reduce possible regulatory costs, but at least part of the costs might be paid by permit fees. Since there is no history of the regulation of these, there is no basis for calculating an aggregate cost.

◆ SMALL BUSINESSES: Wake board parks would probably be small businesses. The rule would eliminate possible compliance costs and permit fees for these businesses. Since the rule wasn't intended to apply to very large bodies of water, compliance with the same standards as a swimming pool would likely make the construction of a wake board park economically infeasible. The rule change would thus potentially be an extraordinarily large cost savings for a wake board park. Calculation of the amount is not possible as the data necessary to do the calculation is not available.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Wake board parks would probably be small businesses. The rule would eliminate possible compliance costs and permit fees for these businesses. Since the rule wasn't intended to apply to very large bodies of water, compliance with the same standards as a swimming pool would likely make the construction of a wake board park economically infeasible. The rule change would thus potentially be an extraordinarily large cost savings for a wake board park. Calculation of the amount is not possible as the data necessary to do the calculation is not available.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There would be no compliance costs for affected persons, but there could be cost savings. Wake board parks would probably be small businesses. The rule would eliminate possible compliance costs and permit fees for these businesses. Since the rule wasn't intended to apply to very large bodies of water, compliance with the same standards as a swimming pool would likely make the construction of a wake board park economically infeasible. The rule change would thus potentially be an extraordinarily large cost savings for a wake board park. Calculation of the amount is not possible as the data necessary to do the calculation is not available.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Clarifying that the public pool rule does not govern wake

boarding ponds is beneficial to regulated business without impairing public health protection.

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

HEALTH  
DISEASE CONTROL AND PREVENTION,  
ENVIRONMENTAL SERVICES  
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:

◆ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at [rmarsden@utah.gov](mailto:rmarsden@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2013

AUTHORIZED BY: David Patton, PhD, Executive Director

**R392. Health, Disease Control and Prevention, Environmental Services.**

**R392-302. Design, Construction and Operation of Public Pools. R392-302-3. General Requirements.**

(1) This rule does not require a construction change in any portion of a public pool facility if the facility was installed and in compliance with law in effect at the time the facility was installed, except as specifically provided otherwise in this rule. However if the Executive Director or the Local Health Officer determines that any facility is dangerous, unsafe, unsanitary, or a nuisance or menace to life, health or property, the Executive Director or the Local Health Officer may order construction changes consistent with the requirements of this rule to existing facilities.

(2) This rule does not regulate any private residential pool. A private residential pool that is used for swimming instruction purposes shall not be regulated as a public pool.

(3) This rule does not regulate any body of water larger than 30,000 square feet, 2,787.1 square meters, and for which the design purpose is not swimming, wading, bathing, diving, a water slide splash pool, or children's water play activities.

**KEY: pools, spas, water slides**

**Date of Enactment or Last Substantive Amendment: [October 18, 2010]2013**

**Notice of Continuation: January 20, 2012**

**Authorizing, and Implemented or Interpreted Law: 26-15-2**

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

### R414-29

#### Client Review/Education and Restriction Policy

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 37085

FILED: 11/30/2012

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to clarify the restriction policy for the Medicaid program.

**SUMMARY OF THE RULE OR CHANGE:** This amendment clarifies the restriction policy for the Medicaid program.

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

#### ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The Department does not anticipate any impact to the state budget because this change only clarifies the restriction policy for the Medicaid program.

♦ **LOCAL GOVERNMENTS:** There is no impact to local governments because they neither fund nor provide Medicaid services to Medicaid recipients.

♦ **SMALL BUSINESSES:** The Department does not anticipate any impact to small businesses because this change only clarifies the restriction policy for the Medicaid program.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate any impact to Medicaid providers and to Medicaid recipients because this change clarifies the restriction policy for the Medicaid program.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The Department does not anticipate any impact to a single Medicaid provider or to a Medicaid recipient because this change only clarifies the restriction policy for the Medicaid program.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Clarification of the terms and conditions when a Medicaid recipient is required to participate in the Medicaid restriction program will assist both providers and recipients to comply with requirements and receive needed benefits. No business fiscal impact is expected.

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 01/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2013

AUTHORIZED BY: David Patton, PhD, Executive Director

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

##### R414-29. Client Review/Education and Restriction Policy.

##### R414-29-1. Introduction and Authority.

(1) The Client Restriction Program promotes the appropriate use of quality medical services by identifying and correcting overutilization of services.

(2) This rule is required by 42 CFR 431.54(e) and 456.3[-1994 ed].

##### R414-29-6. Changes in Restriction Case Manager or Restriction Pharmacy.

(1) If the client requests a change in the Restriction Case Manager or the Restriction Pharmacy, the request [~~must~~ may] be in writing or a verbal request and must verify that the new Restriction Case Manager [~~or Restriction Pharmacy~~] agrees to be the client's Restriction Case Manager [~~or Restriction Pharmacy~~].

(2) The Department must approve all changes in the Restriction Case Manager or the Restriction Pharmacy before the client may use a different Restriction Case Manager or Restriction Pharmacy. Circumstances under which the Department may approve such a change are:

(a) client, Restriction Case Manager, or Restriction Pharmacy moves location;

(b) Restriction Case Manager or Restriction Pharmacy discontinues or limits practice;

(c) Restriction Case Manager, or Restriction Pharmacy requests a change;

(d) Department Staff Physician recommends a change, when his periodic assessment of the use of services reveals indications of possible overutilization by the restricted client, the Restriction Case Manager, or both.

(3) The Department may mandate a change in the Restriction Case Manager or Restriction Pharmacy whenever it determines that the client:

- (a) continues to overutilize services despite being under restriction; or
- (b) is not receiving appropriate care while being managed by the Restriction provider.

**R414-29-7. Length of Restriction.**

(1) All clients shall continue participation in the Restriction Program until they have demonstrated they are not overutilizing services. Once a client is placed in the Restriction Program, a client may request a review for discharge from the Restriction Program after one year. If utilization data supports discharge from the Restriction Program, the client will no longer be enrolled in the program.

(2) If a client loses Medicaid eligibility, and subsequently re-establishes Medicaid eligibility, the Department shall automatically require the client's participation in the Restriction Program.

([2]3) The Department shall assess the client's use of services when requested after Restriction has been maintained for at least one year, based on the client's compliance with the Restriction Case Manager's written treatment plan and recommendations, and shall also use information such as:

- (a) medical care obtained from multiple practitioners;
- (b) prescriptions obtained from multiple practitioners;
- (c) emergency rooms used for non-emergency services as defined in the Utah Medicaid Table of Authorized Emergency Diagnosis;
- (d) use of multiple emergency rooms;
- (e) concurrent use of medications in the same therapeutic class, when prescribed by different practitioners;
- (f) indications of forged or altered prescriptions;
- (g) use of medical services inconsistent with diagnosis;
- (h) other patterns indicating overutilization.

**KEY:** [m]Medicaid

**Date of Enactment or Last Substantive Amendment:** [~~January 21, 1999~~]2013

**Notice of Continuation:** October 5, 2012

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

**Natural Resources, Wildlife Resources**

**R657-13**

**Taking Fish and Crayfish**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 37069

FILED: 11/20/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of

Wildlife Resources' (DWR) fish and crayfish management program.

**SUMMARY OF THE RULE OR CHANGE:** The proposed revision allows: 1) anglers to use three baited hooks, three artificial flies, or three artificial lures while fishing; 2) artificial light to be used when bow fishing for carp statewide; and 3) possession of Gizzard shad at Lake Powell.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 23-14-18 and Section 23-14-19

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** These amendments provide additional opportunities to anglers and do not cause additional burdens to workloads therefore, DWR determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** Since this amendment only adds opportunities to anglers, this should have little to no effect on local governments. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment provides additional opportunities to those anglers choosing to use three hooks, or bow fish for carp, therefore, this rule does not impose any additional financial requirements on persons, nor generate a cost or saving impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment provides additional opportunities to those anglers choosing to use three hooks, or bow fish for carp, therefore, this rule does not impose any additional financial requirements on persons, nor generate a cost or savings impact to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** DWR determines that because this amendment provides additional opportunities to those anglers, the amendments do not create a cost or savings impact to individuals who participate in fishing in Utah.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES  
 WILDLIFE RESOURCES  
 1594 W NORTH TEMPLE  
 SALT LAKE CITY, UT 84116-3154  
 or at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2013

AUTHORIZED BY: James Karpowitz, Director

**R657. Natural Resources, Wildlife Resources.****R657-13. Taking Fish and Crayfish.****R657-13-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking fish and crayfish.

(2) Specific dates, areas, methods of take, requirements and other administrative details which may change annually and are pertinent are published in the proclamation of the Wildlife Board for taking fish and crayfish.

**R657-13-6. Angling.**

(1) While angling, the angler shall be within sight (not to exceed 100 feet) of the equipment being used at all times, except setlines.

(2) Angling with more than one line is unlawful, except:

(a) when using a valid second pole permit in conjunction with an unexpired Utah one day, seven day or annual fishing or combination license;

(b) while fishing for crayfish without the use of fish hooks;

(c) while fishing through the ice at Flaming Gorge Reservoir. A second pole permit is not required when fishing through the ice at Flaming Gorge Reservoir, or when fishing for crayfish with lines without hooks.

(3) No artificial lure may have more than three hooks.

(4) No line may have attached to it more than ~~two~~three baited hooks, ~~two~~three artificial flies, or ~~two~~three artificial lures, except for a setline~~[or while fishing at Flaming Gorge Reservoir or Lake Powell]~~.

(5) When angling through the ice, the hole may not exceed 12 inches across at the widest point, except at Bear Lake, Flaming Gorge Reservoir, and Fish Lake where specific limitations apply.

**R657-13-11. Restrictions on Taking Fish and Crayfish.**

(1) Artificial light is permitted while angling, except when underwater spearfishing. However artificial light is permitted

while underwater spearfishing for burbot in Flaming Gorge or while bow fishing for carp statewide.

(2) A person may not obstruct a waterway, use a chemical, explosive, electricity, poison, crossbow, firearm, pellet gun, or archery equipment to take fish or crayfish, except as provided in Subsection R657-13-14(1)(c) and Section R657-13-20.

(3) A person may not take protected aquatic wildlife by snagging or gaffing, except at Lake Powell where a gaff may be used to land striped bass. It is unlawful to possess a gaff at waters, except at Lake Powell.

(4) Chumming is prohibited on all waters, except as provided in Section R657-13-20.

(5) The use of a float tube or a boat, with or without a motor, to take protected aquatic wildlife is permitted on many public waters. However, boaters should be aware that other agencies may have additional restrictions on the use of float tubes, boats, or boats with motors on some waters.

(6) Nongame fish and crayfish may be taken only as provided in Sections R657-13-14 and R657-13-15.

**R657-13-13. Prohibited Fish.**

(1) The following species of fish are classified as prohibited and may not be taken or held in possession:

- (a) Bonytail (*Gila elegans*);
- (b) Bluehead sucker (*Catostomus discobolus*);
- (c) Colorado pikeminnow (*Ptychocheilus lucius*);
- (d) Flannelmouth sucker (*Catostomus latipinnis*);
- (e) Gizzard shad (*Dorosoma cepedianum*), except at Lake

Powell:

- (f) Grass carp (*Ctenopharyngodon idella*);
- (g) Humpback chub (*Gila cypha*);
- (h) June sucker (*Chasmistes liorus*);
- (i) Least chub (*Lotichthys phlegethontis*);
- (j) Leatherside chub (*Snyderichthys copei*);
- (k) Razorback sucker (*Xyrauchen texanus*);
- (l) Roundtail chub (*Gila robusta*);
- (m) Virgin River chub (*Gila seminuda*);
- (n) Virgin spinedace (*Lepidomeda mollispinis*); and
- (o) Woundfin (*Plagopterus argentissimus*).

(2) Any of these species taken while attempting to take other legal species shall be immediately released.

**KEY: fish, fishing, wildlife, wildlife law**

**Date of Enactment or Last Substantive Amendment:** ~~January 10, 2012~~2013

**Notice of Continuation:** October 1, 2012

**Authorizing, and Implemented or Interpreted Law:** 23-14-18; 23-14-19; 23-19-1; 23-22-3

**End of the Notices of Proposed Rules Section**

## NOTICES OF CHANGES IN PROPOSED RULES

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

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

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period, and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends January 14, 2013.

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

From the end of the 30-day waiting period through April 14, 2013, an agency may notify the Division of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses and the agency must start the process over.

**CHANGES IN PROPOSED RULES** are governed by Section 63G-3-303; Rule R15-2; and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

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

**Insurance, Administration**  
**R590-171**  
**Surplus Lines Procedures Rule**

**NOTICE OF CHANGE IN PROPOSED RULE**  
 DAR FILE NO.: 36846  
 FILED: 11/29/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to make corrections suggested during the comment period that just ended.

**SUMMARY OF THE RULE OR CHANGE:** The reference in Subsection R590-171-3(B)(b) to "R590-171-3(B)(a)(iii)(A), (B), and (C)" needs to be corrected to "Subsection R590-171-3(B)(a)(iii) (A), (B), and (D)" since (C) does not refer to a dollar amount as required in the text of Subsections R59-171-3(B)(a) and (b). In addition, the effective date in Subsection R590-171-3(b) should be 2015 and not 2018. This date change is made in order to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRRA), as noted in the department's Bulletin 2011-4, Nonadmitted Insurance Reform. The date of the enactment of the NRRRA was 07/21/2010 which makes the fifth January 1 after that date 01/01/2015. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the October 15, 2012, issue of the Utah State Bulletin, on page 74. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 31A-15-111 and Section 31A-2-201 and Subsection 31A-15-103(11) and Subsection 31A-15-103(3)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** Neither of the changes noted in the summary above will have a fiscal impact on the department or the state's budget. The correction in the code citation makes it conform to the language in the Subsections R590-171-3(B)(a) and (b). The correction in the date makes it conform to the date in the department's Bulletin 2011-4 that surplus lines insurers and producers are already aware of and complying with.
- ◆ **LOCAL GOVERNMENTS:** This rule has no impact on local governments since it deals solely with the placement of nonadmitted insurance in Utah, which the department regulates.
- ◆ **SMALL BUSINESSES:** The changes to this rule are technical and correct a code reference to conform with the language in Subsections R590-171-3(B)(a) and (b), and a

date to conform with Bulletin 2011-4, which surplus lines producers are already aware of and complying with. Therefore, the changes will have no fiscal impact on producers of smaller agencies.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The changes to this rule are technical and correct a code reference to conform with the language in Subsections R590-171-3(B)(a) and (b), and a date to conform with Bulletin 2011-4, which surplus lines insurers are already aware of and complying with. Therefore, the changes will have no fiscal impact on these insurers or their consumers.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The changes, which are technical, will have no fiscal impact on surplus lines insurers, producers or their consumers. The changes correlate the code citation with the language in Subsections R590-171-3(B)(a) and (b) and coordinate the date in Subsection R590-171-3 to the language in Bulletin 2011-4.

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

**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 01/14/2013**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2013**

**AUTHORIZED BY: Neal Gooch, Commissioner**

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**R590. Insurance, Administration.**  
**R590-171. Surplus Lines Procedures Rule.**

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**R590-171-3. Definitions.**

For the purpose of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301 and in addition the following:

A. "Export list" means a list published by the commissioner of coverages and classes of insurance for which the commissioner has determined no general market exists with admitted insurers.

B.(a) "Exempt Commercial Purchaser" means any person purchasing commercial insurance from the surplus lines market that, at the time of placement, meets the following requirements:

(i) The person employs or retains a qualified risk manager to negotiate insurance coverage;

(ii) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months; and

(iii) The person meets at least one of the following criteria:

(A) The person possesses a net worth in excess of \$20,000,000 as such amount is adjusted pursuant to Subsection (b);

(B) The person generates annual revenues in excess of \$50,000,000 as such amount is adjusted pursuant to Subsection (b);

(C) The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate;

(D) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$30,000,000 as such amount is adjusted pursuant to Subsection (b); or

(E) The person is a municipality with a population in excess of 50,000 persons.

(b) Effective on January 1, [2018]2015, and each fifth January occurring thereafter, the amounts in R590-171-3.B (a)(iii)(A),

(B), and [(C)](D) shall be adjusted to reflect the percentage change for such 5-year period in the Consumer Price index for all Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor, 15 U.S.C. [§] 8206(5).

C. "Producer" means an insurance agent, broker or surplus lines broker as defined in Section 31A-1-301-88.

D. "Surplus lines producer" means a licensee as defined in Section 31A-23a-106(2)(a)(viii) to place insurance with surplus lines insurers in accordance with Section 31A-15-103 and this rule.

E. "Surplus lines insurer" means a nonadmitted insurer that may place business, pursuant to Title 31A, Chapter 15, Part 1 and this rule, with a surplus lines producer.

F. "Surplus lines transaction" means the solicitation, negotiation, procurement or effectuation with a surplus lines insurer of an insurance contract or certificate of insurance. It also means any renewal, cancellation, endorsement, audit, or other adjustment to the insurance contract.

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**KEY: insurance**

**Date of Enactment or Last Substantive Amendment: [2012]2013**

**Notice of Continuation: May 27, 2010**

**Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-15-103; 31A-15-111**

**End of the Notices of Changes in Proposed Rules Section**



# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to remove obsolete rules from the Utah Administrative Code. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **NOTICE**. By filing a Notice, the agency indicates that the rule is still necessary.

**NOTICES** are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. **NOTICES** are effective upon filing.

**NOTICES** are governed by Section 63G-3-305.

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## Health, Administration **R380-50** Local Health Department Funding Allocation Formula

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 37070  
FILED: 11/20/2012

### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26A-1-116 provides - Allocation of state funds to local health departments -- Formula. (1)(a) The Departments of Health and Environmental Quality shall each establish by rule a formula for allocating state funds by contract to local health departments. (b) This formula shall provide for allocation of funds based on need. (c) Determination of need shall be based on population unless the department making the rule establishes by valid and accepted data that other defined factors are relevant and reliable indicators of need. (d) The formula shall include a differential to compensate for additional costs of providing services in rural areas. (2)(a) The formulas established under Subsection (1) shall be in effect on or before July 1, 1991. (b) The formulas apply to all state funds appropriated by the Legislature to the Departments of Health and Environmental Quality for local health departments. (c) The formulas do not apply to funds a local health department receives from: (i) sources other than the Departments of Health and Environmental Quality; and (ii) the Departments of Health and Environmental Quality: (A) to

operate a specific program within the local health department's boundaries which program is available to all residents of the state; (B) to meet a need that exists only within the local health department's boundaries; and (C) to engage in research projects. This rule establishes the funding formula.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments were received and the Department of Health supports the strong level of cooperation between local health departments and the state. This rule supports that cooperation. Therefore, this rule should be continued.

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

HEALTH  
ADMINISTRATION  
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:  
♦ Robert Rolfs by phone at 801-538-6111, by FAX at 801-538-6306, or by Internet E-mail at rrolfs@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 11/20/2012

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**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-22**

**Administrative Sanction Procedures  
and Regulations**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 37075  
FILED: 11/26/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 26-18-3(7) requires the Department to provide disciplinary measures and sanctions for Medicaid providers who fail to comply with the rules and procedures of the Medicaid program. Further, 42 CFR 455 requires the Department to investigate fraud, and if necessary, to impose sanctions against providers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it provides the Department and the Provider Sanction Committee discretionary authority to sanction providers for current and past misconduct. The continuation of this rule, therefore, will promote quality service and integrity within the Medicaid program.

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

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director  
EFFECTIVE: 11/26/2012

**Public Service Commission,  
Administration  
R746-100**  
**Practice and Procedure Governing  
Formal Hearings**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 37077  
FILED: 11/28/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized pursuant to Section 54-1-1 which requires the Commission to exercise its rulemaking powers and Section 54-1-2.5 which establishes the requirements for commission procedure in Title 54, Chapter 7.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This rule was amended in February 2011 to make substantive changes. Several subsections of this rule were updated at the time to reflect most current information and technologies. Comments were submitted by Rocky Mountain Power and Century Link regarding filing of PDF documents. The commission took the comments into consideration and made revisions to the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R746-100 is necessary. It establishes organized and efficient procedures and guidelines to be followed in commission hearings and in filing pleadings and other documents. It ensures consistency in the format of information, making research more efficient and effective, and should be continued.

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

PUBLIC SERVICE COMMISSION  
ADMINISTRATION  
HEBER M WELLS BLDG

160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ David Clark by phone at 801-530-6708, by FAX at 801-530-6796, or by Internet E-mail at [drexclark@utah.gov](mailto:drexclark@utah.gov)
- ◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at [sbintz@utah.gov](mailto:sbintz@utah.gov)

AUTHORIZED BY: David Clark, Legal Counsel

EFFECTIVE: 11/28/2012

**Public Service Commission,  
Administration  
R746-101**

**Statement of Rule for the Filing and  
Disposition of Petitions for Declaratory  
Rulings**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 37080  
FILED: 11/28/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized pursuant to Section 54-1-1 which requires the commission to exercise its rulemaking powers. Subsection 63G-4-503(2) requires each agency to issue rules defining procedure for filing petitions for declaratory rulings.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received in last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R746-101 should be continued because it continues to be required by Subsection 63G-4-503(2). It identifies and sets forth the procedure for filing a Petition for Declaratory Ruling, the format of a petition, and the procedure of review and disposition of the petition. This rule makes it clear to the public what is expected from a petitioner

and what they can expect from the commission when they need an explanation of rights, status, interests, or other legal relationships under a statute, rule, or order.

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

PUBLIC SERVICE COMMISSION  
ADMINISTRATION  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ David Clark by phone at 801-530-6708, by FAX at 801-530-6796, or by Internet E-mail at [drexclark@utah.gov](mailto:drexclark@utah.gov)
- ◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at [sbintz@utah.gov](mailto:sbintz@utah.gov)

AUTHORIZED BY: David Clark, Legal Counsel

EFFECTIVE: 11/28/2012

**Public Service Commission,  
Administration  
R746-200**

**Residential Utility Service Rules for  
Electric, Gas, Water and Sewer Utilities**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 37081  
FILED: 11/28/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 54-4-1 authorizes the commission to regulate every public utility in Utah and supervise the business of those public utilities necessary to accomplish that regulation and supervision. Section 54-4-7 requires that the commission provide rules to ensure that utility service and equipment is just, safe, proper, and adequate. Section 54-7-25 provides for penalties referred to in Section R746-200-9.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment have been received in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The commission must continue to regulate every public utility in Utah and provide rules to ensure that utility service and equipment is just, safe, proper, and adequate. Rule R746-200 establishes and enforces utility residential service practices and procedures such as eligibility, deposits, account billing, deferred payment agreements, termination, review of consumer complaints and penalties, therefore this rule should be continued.

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

PUBLIC SERVICE COMMISSION  
ADMINISTRATION  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ David Clark by phone at 801-530-6708, by FAX at 801-530-6796, or by Internet E-mail at [drexclark@utah.gov](mailto:drexclark@utah.gov)
- ◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at [sbintz@utah.gov](mailto:sbintz@utah.gov)

AUTHORIZED BY: David Clark, Legal Counsel

EFFECTIVE: 11/28/2012

Public Service Commission,  
Administration

**R746-310**

Uniform Rules Governing Electricity  
Service by Electric Utilities

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 37078

FILED: 11/28/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 54-1-1 requires that the commission exercise its rulemaking powers. Section 54-4-1 authorizes the commission to regulate every public utility in Utah. Section 54-4-7 requires that the commission provide rules to ensure that utility service and equipment is just, safe, proper and adequate. Section 54-4-14 authorizes the

commission to promulgate rules to require utilities to conduct business in such a way as to safeguard the health and safety of its employees, customers, and the public. Section 54-4-23 authorizes the commission to prescribe a system of accounts to be kept by public utilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: In 2007, a petition was submitted by DPU to amend the rule. The purpose to amend was to reflect the current National Electric Safety Code C2-2007 and American National Standard for Electric Power Systems and Equipment - Voltage Ratings (60 Hz). No other comments were submitted in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R746-310 establishes guidelines for customer relations, meters and meter testing; station instruments, voltage and frequency restrictions, design, construction, and operation of facilities; line extensions; accounting; billing adjustments; overbilling; and preservation of records. This rule is necessary because the commission is required to regulate every public utility in Utah including electric utilities. It also provides rules to ensure that utility service and equipment is just, safe, proper, and adequate; and therefore, this rule should be continued.

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

PUBLIC SERVICE COMMISSION  
ADMINISTRATION  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ David Clark by phone at 801-530-6708, by FAX at 801-530-6796, or by Internet E-mail at [drexclark@utah.gov](mailto:drexclark@utah.gov)
- ◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at [sbintz@utah.gov](mailto:sbintz@utah.gov)

AUTHORIZED BY: David Clark, Legal Counsel

EFFECTIVE: 11/28/2012

Public Service Commission,  
Administration

**R746-320**

Uniform Rules Governing Natural Gas  
Service

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 37079  
FILED: 11/28/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized pursuant to Section 54-1-1 which requires the commission to exercise its rulemaking powers; Section 54-4-1 gives the commission the power and jurisdiction to regulate all public utilities in Utah; and Section 54-4-7 requires that the commission provide rules to ensure that utility service and equipment is just, safe, proper, and adequate. Section 54-4-14 authorizes the commission to promulgate rules to require utilities to conduct business in such a way as to safeguard the health and safety of its employees, customers, and the public. Section 54-4-23 authorizes the commission to prescribe a system of accounts to be kept by public utilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: On 09/14/2012, Questar Gas Company petitioned the Public Service Commission of Utah to amend rules applicable to crossed meter conditions so that the time period for calculating backbilled amounts and refunds would be identical. This change would help avoid complications from disparate time periods as currently contained in the rule. Consequently, a rule change conforming to Questar's petition has been submitted. This rule change is currently in the comment period. Comments at

the time of the amendment were received by the Division of Public Utilities and Office of Consumer Services. They are in agreement with Questar's petition to change the billing procedures for cross meter conditions.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R746-320 should be continued (including the proposed changes) because it establishes guidelines for methods and conditions of service for natural gas utilities such as; quality control of equipment; standards; records; testing and location of meters; plant operations and construction, records; and accounting.

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

PUBLIC SERVICE COMMISSION  
ADMINISTRATION  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ David Clark by phone at 801-530-6708, by FAX at 801-530-6796, or by Internet E-mail at [drexclark@utah.gov](mailto:drexclark@utah.gov)  
◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at [sbintz@utah.gov](mailto:sbintz@utah.gov)

AUTHORIZED BY: David Clark, Legal Counsel

EFFECTIVE: 11/28/2012

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**End of the Five-Year Notices of Review and Statements of Continuation 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

Consumer Protection

No. 36903 (AMD): R152-22-6.Application for Professional Fund Raiser, Fund Raising Counsel or Consultant Permit  
Published: 10/15/2012

Effective: 11/29/2012

No. 36904 (AMD): R152-23.Utah Health Spa Services

Published: 10/15/2012

Effective: 11/29/2012

Occupational and Professional Licensing

No. 36858 (AMD): R156-1-506.Supervision of Cosmetic Medical Procedures

Published: 10/15/2012

Effective: 11/26/2012

No. 36901 (AMD): R156-17b.Pharmacy Practice Act Rule

Published: 10/15/2012

Effective: 11/29/2012

No. 36873 (AMD): R156-37-402.Continuing Professional Education for Controlled Substance Prescribers

Published: 10/15/2012

Effective: 11/26/2012

No. 36892 (AMD): R156-40.Recreational Therapy Practice Act Rule

Published: 10/15/2012

Effective: 11/26/2012

### Governor

Economic Development

No. 36749 (AMD): R357-6.Technology and Life Science Economic Development and Related Tax Credits

Published: 10/01/2012

Effective: 11/26/2012

No. 36855 (NEW): R357-9.Alternative Energy Development Tax Incentives

Published: 10/15/2012

Effective: 11/26/2012

### Health

Health Care Financing, Coverage and Reimbursement Policy

No. 36871 (AMD): R414-1-5.Incorporations by Reference

Published: 10/15/2012

Effective: 11/30/2012

No. 36872 (AMD): R414-301.Medicaid General Provisions

Published: 10/15/2012

Effective: 12/01/2012

### Housing Corporation (Utah)

Administration

No. 36782 (AMD): R460-2.Definitions of Terms Used Throughout R460

Published: 10/15/2012

Effective: 11/27/2012

No. 36781 (AMD): R460-4.Additional Servicing Rules

Published: 10/15/2012

Effective: 11/27/2012

No. 36783 (AMD): R460-5.Termination of Eligibility to Participate in Programs

Published: 10/15/2012

Effective: 11/27/2012

No. 36784 (AMD): R460-8.Americans with Disabilities Act Complaint Procedures

Published: 10/15/2012

Effective: 11/27/2012

### Natural Resources

Wildlife Resources

No. 36785 (AMD): R657-9.Taking Waterfowl, Common Snipe and Coot

Published: 10/15/2012

Effective: 11/27/2012

NOTICES OF RULE EFFECTIVE DATES

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Public Safety

Driver License

No. 36698 (NEW): R708-48.Ignition Interlock System Program

Published: 09/15/2012

Effective: 11/19/2012

Fire Marshal

No. 36852 (AMD): R710-9.Rules Pursuant to the Utah Fire Prevention and Safety Act

Published: 10/15/2012

Effective: 11/21/2012

Transportation

Motor Carrier

No. 36863 (R&R): R909-2.Utah Trucking Guide

Published: 10/15/2012

Effective: 11/26/2012

Motor Carrier, Ports of Entry

No. 36864 (REP): R912-6.Ports-of-Entry By-Pass Permit Provisions

Published: 10/15/2012

Effective: 11/26/2012

No. 36865 (REP): R912-8.Minimum Tire, Axle and Suspension Ratings for Heavy Vehicles and the Use of Retractable or Variable Load Suspension Axles in Utah

Published: 10/15/2012

Effective: 11/26/2012

No. 36866 (REP): R912-10.Requirements for Pilot/Escort Qualified Training and Certification Programs

Published: 10/15/2012

Effective: 11/26/2012

No. 36867 (REP): R912-16.Special Mobile Equipment

Published: 10/15/2012

Effective: 11/26/2012

**End of the Notices of Rule Effective Dates Section**

**RULES INDEX  
BY AGENCY (CODE NUMBER)  
AND  
BY KEYWORD (SUBJECT)**

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The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2012 through November 30, 2012. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

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## RULES INDEX - BY AGENCY (CODE NUMBER)

### ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>ADMINISTRATIVE SERVICES</b>					
<u>Administration</u>					
R13-2-4	Requests for Access	36285	AMD	08/07/2012	2012-12/8
<u>Archives</u>					
R17-9	Electronic Participation at Meetings	35304	NEW	01/30/2012	2011-20/6
<u>Child Welfare Parental Defense (Office of)</u>					
R19-1-6	Child Welfare Parental Defense Oversight Committee	35205	AMD	01/12/2012	2011-18/6
R19-1-7	Electronic Meetings	35206	AMD	01/12/2012	2011-18/7
<u>Debt Collection</u>					
R21-1	Transfer of Collection Responsibility of State Agencies	36420	5YR	06/28/2012	2012-14/59
R21-1	Transfer of Collection Responsibility of State Agencies	36495	AMD	09/07/2012	2012-15/6
R21-2	Office of State Debt Collection Administrative Procedures	36421	5YR	06/28/2012	2012-14/60
R21-3	Debt Collection Through Administrative Offset	36422	5YR	06/28/2012	2012-14/60
<u>Facilities Construction and Management</u>					
R23-1	Procurement of Construction	36145	5YR	05/03/2012	2012-11/177
R23-1-40	Procurement of Construction	36020	AMD	08/07/2012	2012-8/4
R23-1-40	Acceptable Bid Security; Performance and Payment Bonds	36020	CPR	08/07/2012	2012-13/88
R23-1-40	Acceptable Bid Security; Performance and Payment Bonds	36632	NSC	08/23/2012	Not Printed
R23-4	Suspension/Debarment	37049	5YR	11/14/2012	2012-23/79
R23-5	Contingency Funds	37050	5YR	11/14/2012	2012-23/79
R23-6	Value Engineering and Life Cycle Costing of State Owned Facilities Rules and Regulations	37051	5YR	11/14/2012	2012-23/80
R23-9	Cooperation with Local Government Planning	37052	5YR	11/14/2012	2012-23/81
R23-10	Naming of State Buildings	37053	5YR	11/14/2012	2012-23/81
R23-12	Building Code Appeals Process	36806	5YR	09/19/2012	2012-20/119
R23-14	Management of Roofs on State Buildings	37056	5YR	11/14/2012	2012-23/82
R23-19	Facility Use Rules	36146	5YR	05/03/2012	2012-11/177
R23-20	Free Speech Activities	36148	5YR	05/03/2012	2012-11/178
R23-21	Division of Facilities Construction and Management Lease Procedures	37054	5YR	11/14/2012	2012-23/82
R23-24	Capital Projects Utilizing Non-appropriated Funds	37055	5YR	11/14/2012	2012-23/83
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	36112	AMD	07/01/2012	2012-10/4
R25-7-6	Reimbursements for Meals	36636	NSC	08/30/2012	Not Printed

R25-14	Payment of Attorneys Fees in Death Penalty Cases	35663	5YR	01/12/2012	2012-3/105
R25-20	Indigent Defense Funds Board, Procedures for Electronic Meetings	35975	NEW	05/22/2012	2012-8/5
<u>Fleet Operations</u>					
R27-4	Vehicle Replacement and Expansion of State Fleet	35622	5YR	01/05/2012	2012-3/105
R27-5	Fleet Tracking	35617	5YR	01/05/2012	2012-3/106
R27-5	Fleet Tracking	35623	NSC	01/31/2012	Not Printed
R27-6	Fuel Dispensing Program	35620	5YR	01/05/2012	2012-3/106
R27-7	Safety and Loss Prevention of State Vehicles	36024	AMD	06/28/2012	2012-9/4
R27-8	State Vehicle Maintenance Program	35621	5YR	01/05/2012	2012-3/107
R27-9	Dispensing Compressed Natural Gas to the Public	35727	NEW	03/26/2012	2012-4/6
<u>Purchasing and General Services</u>					
R33-1	Utah State Procurement Rules Definitions	35664	AMD	03/30/2012	2012-3/4
R33-1	Utah State Procurement Rules Definitions	36423	5YR	07/02/2012	2012-14/61
R33-2	Procurement Organization	36424	5YR	07/02/2012	2012-14/61
R33-3	Source Selection and Contract Formation	35613	AMD	03/30/2012	2012-2/6
R33-3	Source Selection and Contract Formation	36425	5YR	07/02/2012	2012-14/62
R33-3-7	Types of Contracts	35667	AMD	03/30/2012	2012-3/6
R33-4	Specifications	35665	AMD	03/30/2012	2012-3/10
R33-4	Specifications	36426	5YR	07/02/2012	2012-14/62
R33-5	Construction and Architect-Engineer Selection	36428	5YR	07/02/2012	2012-14/63
R33-6-101	Revisions to Contract Clauses	35666	AMD	03/30/2012	2012-3/12
R33-8	Property Management	36430	5YR	07/02/2012	2012-14/63
R33-12	Rules of Procedure for Procurement Policy Board and Procurement Appeals Panel	36657	NEW	10/08/2012	2012-17/4
<u>Risk Management</u>					
R37-1	Risk Management General Rules	36286	5YR	05/30/2012	2012-12/81
R37-2	Risk Management State Workers' Compensation Insurance Administration	36287	5YR	05/30/2012	2012-12/81
R37-3	Risk Management Adjudicative Proceedings	36288	5YR	05/30/2012	2012-12/82
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	36289	5YR	05/30/2012	2012-12/83
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	35844	AMD	05/31/2012	2012-5/4
AGRICULTURE AND FOOD					
<u>Administration</u>					
R51-2	Administrative Procedures for Informal Proceedings Before the Utah Department of Agriculture and Food	35614	5YR	01/04/2012	2012-3/107
<u>Animal Industry</u>					
R58-1	Admission and Inspection of Livestock, Poultry, and Other Animals	35691	5YR	01/18/2012	2012-4/59
R58-3	Brucellosis Vaccination Requirements	36143	EMR	05/08/2012	2012-11/167
R58-3	Brucellosis Vaccination Requirements	36683	NEW	10/29/2012	2012-18/4
R58-6	Poultry	35692	5YR	01/18/2012	2012-4/59
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**ABBREVIATIONS**

AMD = Amendment  
 CPR = Change in proposed rule  
 EMR = Emergency rule (120 day)  
 NEW = New rule  
 EXD = Expired  
 NSC = Nonsubstantive rule change  
 REP = Repeal  
 R&R = Repeal and reenact  
 5YR = Five-Year Review

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	36666	R277-703	AMD	10/09/2012	2012-17/35
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Health, Administration	36025	R380-20	5YR	04/03/2012	2012-9/92
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	36322	R199-9	REP	09/11/2012	2012-13/32
	36324	R199-11	REP	09/11/2012	2012-13/36
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Education, Administration	36364	R277-408	NEW	08/08/2012	2012-13/49
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	36374	R277-618	NEW	08/08/2012	2012-13/63
	36743	R277-618	NSC	10/01/2012	Not Printed
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	36521	R990-8	NSC	07/31/2012	Not Printed
	36217	R990-9	NEW	07/09/2012	2012-11/144
	36522	R990-9	NSC	07/31/2012	Not Printed
	36219	R990-11	NEW	07/09/2012	2012-11/148
	36524	R990-11	NSC	07/31/2012	Not Printed
	36221	R990-100	NEW	07/09/2012	2012-11/151
	36525	R990-100	NSC	07/31/2012	Not Printed
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	35413	R307-405	AMD	02/02/2012	2011-23/42
	35872	R307-405-3	NSC	02/29/2012	Not Printed
	36339	R307-415	5YR	06/06/2012	2012-13/104
	35529	R307-415-2	AMD	03/07/2012	2012-1/25
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	36061	R861-1A-16	AMD	06/14/2012	2012-9/65
	36172	R861-1A-20	AMD	07/26/2012	2012-11/111
	36694	R861-1A-20	AMD	10/25/2012	2012-18/49
	36361	R861-1A-26	AMD	08/27/2012	2012-13/78
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	36126	R477-11	AMD	07/02/2012	2012-10/79
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Natural Resources, Wildlife Resources	36494	R657-3	AMD	09/10/2012	2012-15/38
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<u>withholding tax</u>					
Tax Commission, Auditing	35604	R865-14W	5YR	01/03/2012	2012-2/132
<u>witness fees</u>					
Labor Commission, Adjudication	36399	R602-1	5YR	06/19/2012	2012-14/70
<u>women</u>					
Health, Family Health and Preparedness, WIC Services	35812	R406-100	5YR	02/02/2012	2012-5/104
	35813	R406-200	5YR	02/02/2012	2012-5/105
	35814	R406-201	5YR	02/02/2012	2012-5/105
	35815	R406-202	5YR	02/02/2012	2012-5/106
	35816	R406-301	5YR	02/02/2012	2012-5/106
<u>wood furniture</u>					
Environmental Quality, Air Quality	35787	R307-343	5YR	02/01/2012	2012-4/89
<u>work zone traffic control</u>					
Transportation, Operations, Traffic and Safety	36610	R920-3	EXT	08/01/2012	2012-16/203
	36706	R920-3	REP	10/23/2012	2012-18/67
<u>work-based learning programs</u>					
Education, Administration	35938	R277-916	AMD	05/08/2012	2012-7/35
<u>work-related diseases</u>					
Labor Commission, Occupational Safety and Health	36971	R614-6	5YR	10/22/2012	2012-22/159
<u>workers' compensation</u>					
Administrative Services, Risk Management	36287	R37-2	5YR	05/30/2012	2012-12/81
Labor Commission, Adjudication	36400	R602-2	5YR	06/19/2012	2012-14/71
	36965	R602-3	5YR	10/22/2012	2012-22/156
Labor Commission, Industrial Accidents	36402	R612-1	5YR	06/19/2012	2012-14/71
	36686	R612-1-3	AMD	10/22/2012	2012-18/28
	36454	R612-1-10	NSC	07/25/2012	Not Printed
	36685	R612-3-4	AMD	10/22/2012	2012-18/31
Workforce Services, Unemployment Insurance	36256	R994-404	5YR	05/22/2012	2012-12/92
<u>x-rays</u>					
Environmental Quality, Radiation Control	35906	R313-35	5YR	03/02/2012	2012-7/65

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<u>youth</u>					
Human Services, Administration, Administrative Services, Licensing	36955	R501-8	5YR	10/18/2012	2012-22/153
	36959	R501-16	5YR	10/18/2012	2012-22/155
<u>zoning</u>					
Administrative Services, Facilities Construction and Management	37052	R23-9	5YR	11/14/2012	2012-23/81
<u>zoological animals</u>					
Natural Resources, Wildlife Resources	36494	R657-3	AMD	09/10/2012	2012-15/38
	36746	R657-3	NSC	10/01/2012	Not Printed