

UTAH STATE BULLETIN

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

The *Utah State Bulletin (Bulletin)* is the 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 63-46a-10, *Utah Code Annotated* 1953.

Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone (801) 538-3218, FAX (801) 538-1773. To view rules information, and on-line versions of the division's publications, visit: <http://www.rules.state.ut.us/>

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SPECIAL NOTICES

EXECUTIVE ORDER

WHEREAS, sales and use taxation is in need of significant reform and simplification;

WHEREAS, the goal of tax policy is fairness, equity, and a level playing field;

WHEREAS, it is the policy of this administration to oppose taxation of the Internet itself, including taxes on access to the Internet, bit taxes, bandwidth taxes, discriminatory, new or multiple taxes;

WHEREAS, it is the policy of this administration to oppose the introduction of any new tax on remote sales;

WHEREAS, as additional revenues become available through reforming and simplifying sales and use tax, they should be applied to reduce taxes rather than to make government bigger and those revenues can be applied to phase out the sales tax on food or otherwise reduce the tax burden on citizens and businesses currently collecting and paying the tax;

NOW, THEREFORE, I, Michael O. Leavitt, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and laws of the State of Utah, including Section 59-1-903 of the Utah Code, hereby order as follows:

1. The Tax Review Commission is requested and directed to study and develop a plan for:
 - a. tax simplification, including particularly sales and use tax simplification; and
 - b. the fair and administratively-sound reduction and eventual elimination of the sales tax on food, or other reductions in existing sales and use tax burdens, as additional revenues on remote sales are generated from taxes currently owed but not collected.
2. The Tax Review Commission may offer a range of options and suggestions as part of its plan, noting wherever possible the anticipated fiscal impact of each option and any administrative or tax policy implications.
3. The plan shall not include or recommend new taxes.
4. The Utah State Tax Commission and other state agencies as needed shall support and cooperate with the Tax Review Commission.
5. The Tax Review Commission shall give an initial report of its study and plan by November 30, 2000.
6. This order shall remain in effect until the Tax Review Commission submits its final report and plan.

IN WITNESS WHEREOF, I have here unto set my hand and cause to be affixed the Great Seal of the State of Utah. Done at the State Capitol in Salt Lake City, Utah, this 18th day of January, 2000.

(STATE SEAL)

MICHAEL O. LEAVITT
Governor

Attest:
OLENE WALKER
Lieutenant Governor

**DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT, LIBRARY**

PUBLIC NOTICE

The Utah State Library Division has made available Utah State Publications List No. 00-03, dated February 7, 2000. For copies of the complete list, contact the Utah State Library Division at: 1950 West 250 North, Suite A, Salt Lake City, UT 84116-7901; phone: (801) 715-6777; or the Division of Administrative Rules, PO Box 141007, Salt Lake City, UT, 84114-1007; phone: (801) 538-3218; FAX: (801) 538-1773. This list is available on the World Wide Web at:
<http://www.state.lib.ut.us/publicat/publicat.htm>.

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between January 15, 2000, 12:00 a.m., and February 1, 2000, 11:59 p.m., are included in this, the February 15, 2000, 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 (•••••) indicates that unaffected text was removed to conserve space. If a 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 filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least March 16, 2000. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through June 14, 2000, 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 31 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

The public, interest groups, and governmental agencies are invited to review and comment on PROPOSED RULES. *Comment may be directed to the contact person identified on the RULE ANALYSIS for each rule.*

PROPOSED RULES are governed by *Utah Code* Section 63-46a-4 (1996); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page.

Alcoholic Beverage Control,
Administration

R81-1-7

Disciplinary Hearings

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 22639

FILED: 02/01/2000, 10:56

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To amend the rule governing disciplinary hearings.

SUMMARY OF THE RULE OR CHANGE: Designates all adjudicative proceedings as informal for violations of the alcohol beverage control laws and establishes procedures for informal actions. Eliminates use of formal adjudicative proceedings. Allows assessment of penalties for violations by out-of-state companies authorized to sell beer in the state under a certificate of approval.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63, Chapter 46b; and Sections 32A-1-107, 32A-1-119, and 32A-1-120

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: No change--at present, approximately 2/3 of our cases are adjudicated informally, and 1/3 formally. The main differences are that with formal procedures, the respondent is required to file an answer, is allowed to engage in formal discovery, and may have the case judicially reviewed in the court of appeals instead of district court. As a practical matter, very few respondents in formal cases file meaningful answers or engage in formal discovery. Most cases are settled. If a case goes to an evidentiary hearing, it is handled identically to those informal cases that go to hearing. Thus, the overall costs of adjudication should remain about the same under the informal process.

❖LOCAL GOVERNMENTS: No change--local government involvement in either the formal or informal process is identical. Local law enforcement agencies forward their investigative reports, and provide officers to testify at any adjudicative hearing.

❖OTHER PERSONS: None--this rule changes the procedure for adjudicating violations of the alcohol beverage control laws and applies only to Department of Alcoholic Beverage Control (DABC) licensees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Some respondents (licensees, permittees, certificate holders, etc.) should incur a slight cost savings under this rule. They will no longer have the expense of filing a formal answer to the agency's notice of agency action, and will be allowed access to the information in the agency's files without having to request the information through formal discovery. Thus, their attorney's fees should be slightly reduced in those cases that

previously would have been adjudicated under the formal process.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: History shows we have had only three hearings that have gone to discovery in the last 10 years. Any fiscal impact on business should be reduced.

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

Alcoholic Beverage Control
Administration
1625 South 900 West
PO Box 30408
Salt Lake City, UT 84130-0408, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Clara Fritz or Earl Dorius at the above address, by phone at (801) 977-6800, by FAX at (801) 977-6889, or by Internet E-mail at abcmain.cfriz@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/16/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 03/27/2000

AUTHORIZED BY: Kenneth F. Wynn, Director

**R81. Alcoholic Beverage Control, Administration.
R81-1. Scope of Definitions, and General Provisions.
R81-1-7. Disciplinary Hearings.**

(1) General Provisions.

(a) This rule is promulgated pursuant to Section 32A-1-107(1)(c)(i) and shall govern the procedure for disciplinary actions under the jurisdiction of the commission. Package agencies are expressly excluded from the provisions of this rule, and are governed by the terms of the package agency contract.

(b) Liberal Construction. Provisions of this rule shall be liberally construed to secure just, speedy and economical determination of all issues presented in any disciplinary action.

(c) Emergency Adjudication Proceedings. The department or commission may issue an order on an emergency basis without complying with the Utah Administrative Procedures Act in accordance with the procedures outlined in Section 63-46b-20.

(d) Utah Administrative Procedures Act. Proceedings under this rule shall be in accordance with Title 63, Chapter 46b, Utah Administrative Procedures Act (UAPA), and ~~[Section 32A-1-119 insofar as it does not conflict with the UAPA]~~ Sections 32A-1-119 and -120.

(e) Penalties. This rule shall govern the imposition of any penalty against a commission licensee, ~~[or] permittee, or certificate of approval holder,~~ an employee or agent of a licensee, ~~[or] permittee, or certificate of approval holder,~~ and a manufacturer, supplier or importer whose products are listed in this state. Penalties may include a letter of admonishment, imposition of a fine, the suspension or revocation of a commission license, ~~[or]~~

permit, or certificate of approval, the assessment of costs of action, an order prohibiting an employee or agent of a licensee, ~~or~~ permittee, or certificate of approval holder, from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any commission licensee, permittee, or certificate of approval holder for a period determined by the commission, the forfeiture of bonds, ~~and~~ an order removing a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission, and an order removing the products of a certificate of approval holder from the state approved sales list, and a suspension of the purchase of the products in the state. Department administrative costs are the hourly pay rate plus benefits of each department employee involved in processing and conducting the adjudicative proceedings on the violation, an hourly charge for department overhead costs, the amount billed the department by an independent contractor for services rendered in conjunction with an adjudicative proceeding, and any additional extraordinary or incidental costs incurred by the department. The commission may also assess additional costs if a respondent fails to appear before the commission at the final stage of the adjudicative process. Department overhead costs are calculated by taking the previous year's total department expenditures less staff payroll charges expended on violations, dividing it by the previous year's total staff hours spent on violations, and multiplying this by a rate derived by taking the previous year's total staff payroll spent on violations to the previous year's total payroll of all office employees. The overhead cost figure shall be recalculated at the beginning of each fiscal year.

(f) Perjured Statements. Any person who makes any false or perjured statement in the course of a disciplinary action is subject to criminal prosecution under Section 32A-12-304.

(g) Service. Service of any document shall be satisfied by service personally or by certified mail upon any respondent, or upon any officer or manager of a corporate respondent, or upon an attorney for a respondent, or by service personally or by certified mail to the last known address of the respondent ~~and~~ or any of the following:

(i) Service personally or by certified mail upon any employee working in the respondent's ~~licensed~~ premises; or

(ii) Posting of the document or a notice of certified mail upon a ~~licensed~~ respondent's premises; or

(iii) Actual notice. Proof of service shall be satisfied by a receipt of service signed by the person served or by a certificate of service signed by the person served, or by certificate of service signed by the server, or by verification of posting on the ~~licensed~~ respondent's premises.

(h) Filing of Pleadings or Documents. Filing by a respondent of any pleading or document shall be satisfied by timely delivery to the department office, 1625 South 900 West, Salt Lake City, or by timely delivery to P. O. Box 30408, Salt Lake City, Utah 84130-0408.

(i) Representation. A respondent who is not a corporation may represent himself in any disciplinary action, or may be represented by an agent duly authorized by the respondent in writing, or by an attorney. A corporate respondent may be represented by a member of the governing board of the corporation, or by a person duly authorized and appointed by the respondent in

writing to represent the governing board of the corporation, or by an attorney.

(j) Presiding Officers. The commission or the director may appoint presiding officers to receive evidence in disciplinary actions, and to submit to the commission orders containing written findings of fact, conclusions of law, and recommendations for commission action.

(i) If fairness to the [parties]respondent is not compromised, the commission or director may substitute one presiding officer for another during any proceeding.

(ii) A person who acts as a presiding officer at one phase of a proceeding need not continue as presiding officer through all phases of a proceeding.

(iii) Nothing precludes the commission from acting as presiding officer over all or any portion of an adjudication proceeding.

(iv) At any time during ~~a formal or informal~~ an adjudicative proceeding the presiding officer may hold a conference with the [parties]department and the respondent to:

(A) encourage settlement;

(B) clarify issues;

(C) simplify the evidence; or

(D) ~~facilitate discovery, if a formal proceeding; or~~

~~(E) expedite the proceedings.~~

(k) Definitions. The definitions found in Sections 32A-1-105 and Title 63, Chapter 46b apply to this rule.

(l) Computation of Time. The time within which any act shall be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, or state or federal holiday, in which case the next business day shall count as the last day.

(m) Default.

(i) The presiding officer may enter an order of default against a [party]respondent if:

~~(A) a party in an informal adjudicative proceeding fails to participate in the proceeding;~~

~~(B) a party to a formal adjudicative proceeding fails to attend or participate in a hearing; or~~

~~(C) a respondent in a formal adjudicative proceeding fails to file a response to a notice of agency action] the respondent in an adjudicative proceeding fails to attend or participate in the proceeding.~~

(ii) The order shall include a statement of the grounds for default, and shall be mailed to ~~all parties]~~ the respondent and the department.

(iii) A defaulted [party]respondent may seek to have the default order set aside according to procedures outlined in the Utah Rules of Civil Procedure.

(iv) After issuing the order of default, the commission or presiding officer shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the [party]respondent in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting [party]respondent.

(2) Pre-adjudication Proceedings.

(a) Staff Screening. Upon receipt of a violation report, a decision officer of the compliance section of the department shall review the report, and the alleged violator's violation history, and in accordance with R81-1-6, ~~shall~~ determine the range of penalties

which may be assessed should the alleged violator be found guilty of the alleged violation.

(b) Letters of Admonishment. Because letters of admonishment are not "state agency actions" under Section 63-46b-1(1)(a), no adjudicative proceedings are required in processing them, and they shall be handled in accordance with the following procedures:

(i) If the decision officer of the ~~[compliance section of the]~~ department determines that the alleged violation does not warrant an administrative fine, or suspension or revocation of the license, ~~[or] permit, or certificate of approval,~~ or action against an employee or agent of a licensee, ~~[or] permittee, or certificate of approval holder,~~ or against a manufacturer, supplier or importer of products listed in this state, a letter of admonishment may be sent to the respondent.

(ii) A letter of admonishment shall set forth in clear and concise terms:

(A) The case number assigned to the action;

(B) The name of the respondent;

(C) The alleged violation, together with sufficient facts to put a respondent on notice of the alleged violations and the name of the agency or staff member making the report;

(D) Notice that a letter of admonishment may be considered as a part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent; and

(E) Notice that a rebuttal is permitted under these rules within ten days of service of the letter of admonishment.

(F) Notice that the letter of admonishment is subject to the approval of the commission.

(iii) A copy of the law enforcement agency or staff report shall accompany the letter of admonishment. The decision officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iv) A respondent may file a written rebuttal with the department within ten days of service of the letter of admonishment. The rebuttal shall be signed by the respondent, or by the respondent's authorized agent or attorney, and shall set forth in clear and concise terms:

(A) The case number assigned to the action;

(B) The name of the respondent;

(C) Any facts in defense or mitigation of the alleged violation~~[s]~~, and a brief summary of any attached evidence. The rebuttal may be accompanied by supporting documents, exhibits, or signed statements.

(v) If the decision officer is satisfied, upon receipt of a rebuttal, that the letter of admonishment was not well taken, it may be withdrawn and the letter and rebuttal shall be expunged from the respondent's file. Letters of admonishment so withdrawn shall not be considered as a part of the respondent's violation history. If no rebuttal is received, or if the decision officer determines after receiving a rebuttal that the letter of admonishment is justified, the matter shall be submitted to the commission for final approval. Upon commission approval, the letter of admonishment, together with any written rebuttal, shall be placed in the respondent's department file and may be considered as part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent. If the commission rejects the letter of admonishment, it may either direct the decision

officer to dismiss the matter, or may direct that an adjudicative proceeding be commenced seeking a more severe penalty.

(vi) At any time prior to the commission's final approval of a letter of admonishment, a respondent may request that the matter be processed under the adjudicative proceeding process.

(c) Designation of ~~[Formal and]~~ Informal Adjudicative Proceedings.

~~[(i) If the decision officer determines that the alleged violation warrants an administrative fine exceeding \$5,000, a suspension of the license or permit for more than thirty days, or a revocation of the license or permit, the matter shall be referred to a presiding officer who shall commence formal adjudication proceedings.~~

~~[(ii) If the decision officer determines that the alleged violation warrants an administrative fine not exceeding \$5,000, or a suspension of the license or permit for thirty days or less, the matter shall be referred to a presiding officer who shall commence informal adjudicative proceedings.~~

~~[(iii) At any time before a final order is issued, the presiding officer may convert the formal proceeding to an informal proceeding or vice versa if conversion is in the public interest and does not unfairly prejudice the rights of any party.]~~ (i) All adjudicative proceedings conducted under this rule are hereby designated as informal proceedings.

(ii) If the decision officer determines that the alleged violation warrants commencement of adjudicative proceedings, the matter shall be referred to a presiding officer who shall commence informal adjudication proceedings.

(3) The Informal Process.

(a) Notice of agency action.

(i) Upon referral of a violation report from the decision officer for commencement of informal adjudicative proceedings, the presiding officer shall issue and sign a written "[~~Notice~~]notice of agency action" which shall set forth in clear and concise terms:

(A) The names and mailing addresses of all respondents and other persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the ~~[agency]~~department;

(B) The ~~[agency's]~~department's case number;

(C) The name of the adjudicative proceeding, "DABC vs.

";

(D) The date that the notice of agency action was mailed;

(E) A statement that the adjudicative proceeding is to be conducted informally according to the provisions of this rule and Sections 63-46b-4 and -5, and that an informal hearing will be held where the ~~[parties]~~respondent and department shall be permitted to testify, present evidence and comment on the issues;

(F) The date, time and place of any prehearing conference with the presiding officer;

(G) The date, time and place of the scheduled informal hearing;

(H) A statement that a respondent who fails to attend or participate in the hearing may be held in default;

(I) A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

(J) A statement of the purpose of the adjudicative proceeding and questions to be decided including:

(I) the alleged violation, together with sufficient facts to put the respondent on notice of the alleged violation and the name of the agency or department staff member making the violation report;

(II) the penalty sought, which may include assessment of costs under Section 32A-1-119(5)(c)[;] if the respondent is found guilty of the alleged violation, and forfeiture of any compliance bond on final revocation under Section 32A-1-119(5)(d) if revocation is sought in the complaint;

(K) Any violation history of the respondent which may be considered in assessing an appropriate penalty should the respondent be found guilty of the alleged violation; and

(L) The name, title, mailing address, and telephone number of the presiding officer.

(ii) A copy of the law enforcement agency or staff report shall accompany the notice of agency action. The presiding officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iii) The notice of agency action and any subsequent pleading in the case shall be retained in the respondent's department file.

(iv) The notice of agency action shall be mailed to each [party]respondent, any attorney representing the department, and, if applicable, any law enforcement agency that referred the alleged violation to the department.

(v) The presiding officer may permit or require pleadings in addition to the notice of agency action. All additional pleadings shall be filed with the presiding officer, with copies sent by mail to each respondent and to the department.

(vi) Amendment to Pleading. The presiding officer may, upon motion of the respondent or department made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice a respondent or the department shall be disregarded.

(vii) Signing of Pleading. Pleadings shall be signed by the department or respondent, or their authorized attorney or representative, and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth.

(b) The Prehearing Conference.

(i) The presiding officer may hold a prehearing conference with the [parties]respondent and the department to encourage settlement, clarify issues, simplify the evidence, or expedite the proceedings.

(ii) All or part of any adjudicative proceeding may be stayed at any time by a written settlement agreement signed by [a]the department and respondent or [his]their authorized[agent or] attorney or representative, and by the presiding officer. The stay shall take effect immediately upon the signing of the settlement agreement, and shall remain in effect until the settlement agreement is approved or rejected by the commission. No further action shall be required with respect to any action or issue so stayed until the commission has acted on the settlement agreement.

(iii) A settlement agreement approved by the commission shall constitute a final resolution of all issues agreed upon in the settlement. No further proceedings shall be required for any issue settled. The approved settlement shall take effect by its own terms and shall be binding upon [both parties]the respondent and the department. Any breach of a settlement agreement by a respondent [shall]may be [grounds for immediate imposition of the full penalty

sought in the original complaint]treated as a separate violation and shall be grounds for further disciplinary action. Additional sanctions stipulated in the settlement agreement may also be imposed.

(iv) If the settlement agreement is rejected by the commission, the action shall proceed in the same posture as if the settlement agreement had not been reached, except that all time limits shall have been stayed for the period between the signing of the agreement and the commission rejection of the settlement agreement.

(c) The Informal Hearing.

(i) The [parties]respondent and department shall be notified in writing of the date, time and place of the hearing at least ten days in advance of the hearing. Notice may appear in the notice of agency action, or may appear in a separate notice issued by the presiding officer. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure by a respondent to appear at the hearing after notice has been given shall be grounds for default and shall waive both the right to contest the allegations, and the right to the hearing. The presiding officer shall proceed to prepare and serve on respondent [his]an order pursuant to R81-1-7(3)(d).

(ii) All hearings shall be presided over by the presiding officer.

(iii) The [parties]respondent named in the notice of agency action and the department shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply~~[- Irrelevant, immaterial or unduly repetitious evidence shall be excluded-]~~, however, the presiding officer:

(A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

(B) shall exclude evidence privileged in the courts of Utah;

(C) shall recognize presumptions and inferences recognized by law;

(D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document;

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the commission, and of technical or scientific facts within the commission's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

(iv) All testimony shall be under oath.

(v) Discovery is prohibited.

(vi) Subpoenas and orders to secure the attendance of witnesses or the production of evidence shall be issued by the presiding officer when requested by [any party]a respondent or the department, or may be issued by the presiding officer on his own motion.

(vii) ~~[All parties]~~A respondent shall have access to information contained in the ~~[agency's]~~department's files and to material gathered in the investigation of respondent to the extent permitted by law.

(viii) Intervention is prohibited.

(ix) The hearing shall be open to~~[all parties. It shall also be open to]~~ the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in

an open meeting is clearly outweighed by factors enumerated in the closure order. The presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(x) [The hearing shall be electronically or stenographically recorded at the agency's expense. Any party, at his own expense, may employ a reporter or have a reporter approved by the agency prepare a transcript from the agency's record of the hearing. The department shall retain the record of the hearing for a minimum of one year from the date of the hearing or until the completion of any court proceeding on the matter.] Record of Hearing. The presiding officer shall cause an official record of the hearing to be made, at the department's expense, as follows:

(A) The record of the proceedings may be made by means of a tape recorder or other recording device at the department's expense.

(B) The record may also be made by means of a certified shorthand reporter employed by the department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his own expense, may have a person approved by the department, prepare a transcript of the hearing, subject to any restrictions that the department is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or tape recording of a hearing is made, it will be available at the department for use by the respondent, but the original transcript or tape recording may not be withdrawn.

(D) The department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xi) The presiding officer may grant continuances or recesses as necessary.

(xii) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) department; (2) respondent; (3) rebuttal by department.

(xiii) Time limits. The presiding officer may set reasonable time limits for the presentations described above.

(xiv) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a respondent or the department indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the presiding officer when in the public interest.

(xv) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the presiding officer may, in his discretion, permit a respondent and the department to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the presiding officer.

(d) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time after the close of the hearing, the presiding officer shall issue a signed order in writing that includes the following:

(I) the decision;

(II) the reasons for the decision;

(III) findings of facts;

(IV) conclusions of law;

(V) recommendations for final commission action[~~The order shall not recommend a penalty more severe than that sought in the notice of agency action~~];

(VI) notice that a respondent or the department having objections to the presiding officer's order may file written objections with the presiding officer within ten days of service of the order, setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful or not supported by the evidence.

(B) The order shall be based on the facts appearing in the [agency's]department's files and on the facts presented in evidence at the informal hearing. Any finding of fact that was contested may not be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence. The order shall not recommend a penalty more severe than that sought in the notice of agency action.

(C) A copy of the presiding officer's order shall be promptly mailed to the [parties]respondent and the department.

(D) The presiding officer shall wait ten days from service of his order[~~on respondent~~] for written objections, if any. The presiding officer may then amend or supplement his findings of fact, conclusions of law, and recommendations to reflect those objections which have merit ~~and~~or which are not disputed.

(E) Upon expiration of the time for filing written objections, the order of the presiding officer and any written objections timely filed, shall be submitted to the commission for final consideration.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular commission meeting for consideration by the commission. Copies of the order, together with any objections filed[~~by the respondent~~] shall be forwarded to the commission, and the commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The commission shall be deemed a substitute presiding officer for this final stage of the informal adjudicative proceeding pursuant to Sections 63-46b-2(1)(h)(ii)(iii). This stage is not considered a "review of an order by an agency or a superior agency" under Sections 63-46b-12 and -13.

(C) No additional evidence shall be presented to the commission. The commission may, at its discretion, permit the [parties]respondent and department to present oral presentations.

(D) After the commission has reached a final decision, it shall issue a signed, written order pursuant to Section 32A-1-119(5) and 63-46b-5(1)(i), containing:

(I) the decision;

(II) the reasons for the decision;

(III) findings of fact;

(IV) conclusions of law;

(V) [a statement of the effective date of the action taken]action ordered by the commission and effective date of the action taken;

(VI) notice of the right to seek judicial review of the order within 30 days from the date of its issuance in the district court in accordance with Sections 63-46b-14, -15, -17, and -18, and 32A-1-119 and -120.

(E) The commission may adopt in whole or in part, any portion(s) of the initial presiding officer's order.

(F) The order shall be based on the facts appearing in the [agency's]department's files and on the facts presented in evidence at the informal hearing.

(G) The order shall not impose a penalty more severe than that sought in the notice of agency action.

(H) A copy of the commission's order shall be promptly mailed to the [parties]respondent and the department.

(e) Judicial Review.

(i) ~~Respondent may file a~~Any petition for judicial review of the commission's final order must be filed within thirty days from the date the order is issued.

(ii) Appeals from informal adjudicative proceedings shall be to the district court in accordance with Sections 63-46b-15, -17, and -18, and 32A-1-119 and -120. [

~~(4) The Formal Process:~~

~~(a) Notice of Agency Action:~~

~~(i) Upon referral of a violation report from the decision officer for commencement of formal adjudicative proceedings, the presiding officer shall issue and sign a written "notice of agency action" which shall set forth in clear and concise terms:~~

~~(A) The names and mailing addresses of all respondents and other persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designed to appear for the agency;~~

~~(B) The agency's case number;~~

~~(C) The name of the adjudicative proceeding "DABC vs. ";~~

~~(D) The date that the notice of agency action was mailed;~~

~~(E) A statement that the adjudicative proceeding is to be conducted formally according to the provisions of this rule and Sections 63-46b-6 to 63-46b-11;~~

~~(F) A statement that a written response must be filed within thirty days of the mailing date of the notice of agency action and failure to do so may result in an order of default and entry of a final order of the case;~~

~~(G) The date, time, and place of any prehearing conference with the presiding officer;~~

~~(H) The date, time, and place of the scheduled formal hearing;~~

~~(I) A statement that a respondent who fails to attend or participate in the hearing may be held in default;~~

~~(J) A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;~~

~~(K) A statement of the purpose of the hearing and questions to be decided including:~~

~~(i) the alleged violation, together with sufficient facts to put the respondent on notice of the alleged violation, and the name of the agency or staff member mailing the violation report;~~

~~(ii) the penalty sought, which may include assessment of costs under Section 32A-1-119(5)(c), if the respondent is found guilty of the alleged violation, and forfeiture of bonds on final revocation under Section 32A-1-119(5)(d), if revocation is sought in the complaint;~~

~~(L) The name, title, mailing address, and telephone number of the presiding officer;~~

~~(ii) A copy of the law enforcement agency or staff report shall accompany the notice of agency action. The presiding officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.~~

~~(iii) The notice of agency action and any subsequent pleading in the case shall be retained in the respondent's department file.~~

~~(iv) The notice of agency action shall be mailed to each party.~~

~~(b) The Response and Other Pleadings:~~

~~(i) A respondent shall file a written response to the notice of agency action at the department offices within thirty days of the mailing date of the notice of agency action. Extensions of time to file a response are not favored, but may be granted by the presiding officer for good cause shown. The response shall be signed by the respondent, or by an authorized agent or attorney of the respondent, and shall set forth in clear and concise terms:~~

~~(A) the case number assigned to the action;~~

~~(B) the name of the adjudicative proceeding, "DABC vs. —";~~

~~(C) the name of the respondent;~~

~~(D) whether the respondent admits, denies, or lacks sufficient knowledge to admit or deny each allegation stated in the notice of agency action, in which event the allegation shall be deemed denied;~~

~~(E) any facts in defense or mitigation of the alleged violation or possible penalty;~~

~~(F) a brief summary of any attached evidence. Any supporting documents, exhibits, signed statements, transcripts, etc., to be considered as evidence shall accompany the answer;~~

~~(G) a statement of the relief the respondent seeks;~~

~~(H) a statement summarizing the reasons that the relief requested should be granted.~~

~~(ii) Failure to file a timely response shall waive the respondent's right to contest the matters stated in the notice of agency action, and the presiding officer may enter an order of default and proceed to prepare and serve his final order pursuant to R81-1-7(4)(g).~~

~~(iii) The presiding officer may permit or require pleadings in addition to the notice of agency action, and the response. All additional pleadings shall be filed with the presiding officer, with copies sent by mail to each party.~~

~~(iv) Amendment to Pleading. The presiding officer may, upon motion of the responsible party made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice any of the parties shall be disregarded.~~

~~(v) Signing of Pleading. Pleadings shall be signed by the party or the party's attorney and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth.~~

~~(c) Intervention:~~

~~(i) Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the agency. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:~~

~~(A) the agency's case number;~~

~~(B) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceedings or that the petitioner qualifies as an intervenor under any provision of law; and~~

~~(C) a statement of the relief that the petitioner seeks from the agency.~~

~~(ii) Response to Petition. Any party to a proceeding into which intervention is sought may make an oral or written response~~

to the petition for intervention. The response shall state the basis for opposition to intervention and may suggest limitations to be placed upon the intervenor if intervention is granted. The response must be presented or filed at or before the hearing.

— (iii) Granting of Petition. The presiding officer shall grant a petition for intervention if it determines that:

— (A) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

— (B) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

— (iv) Order Requirements:

— (A) Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

— (B) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

— (C) The presiding officer may impose conditions at any time after the intervention.

— (D) If it appears during the course of the proceeding that an intervenor has no direct or substantial interest in the proceeding and that the public interest does not require the intervenor's participation, the presiding officer may dismiss the intervenor from the proceeding.

— (E) In the interest of expediting a hearing, the presiding officer may limit the extent of participation of an intervenor. Where two or more intervenors have substantially like interests and positions, the presiding officer may at any time during the hearing limit the number of intervenors who will be permitted to testify, cross-examine witnesses or make and argue motions and objections.

— (d) The Prehearing Conference:

— (i) The presiding officer may hold a prehearing conference with the parties to encourage settlement, clarify issues, simplify the evidence, facilitate discovery or expedite the proceedings.

— (ii) All or part of any adjudicative proceeding may be stayed at any time by a written settlement agreement signed by a respondent or his authorized agent or attorney and by the presiding officer. The stay shall take effect immediately upon the signing of the settlement agreement, and shall remain in effect until the settlement agreement is approved or rejected by the commission. No further action shall be required with respect to any action or issue so stayed until the commission has acted on the settlement agreement.

— (iii) A settlement agreement approved by the commission shall constitute a final resolution of all issues agreed upon in the settlement. No further proceedings shall be required for any issue settled. The approved settlement shall take effect by its own terms and shall be binding upon both parties. Any breach of a settlement agreement by a respondent shall be grounds for immediate imposition of the full penalty sought in the original complaint. Additional sanctions stipulated in the settlement agreement may also be imposed.

— (iv) If the settlement agreement is rejected by the commission, the action shall proceed in the same posture as if the settlement agreement had not been reached, except that all time limits shall have been stayed for the period between the signing of the agreement and the commission rejection of the settlement agreement.

— (e) Discovery and Subpoenas:

— (i) Discovery. Upon the motion of a party and for good cause shown that it is to obtain relevant information necessary to support a claim or defense, the presiding officer may authorize the manner of discovery against another party or person, including the staff, as may be allowed by the Utah Rules of Civil Procedure.

— (ii) Subpoenas. Subpoenas and orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the presiding officer when requested by any party, or may be issued by the presiding officer on his own motion.

— (f) The Formal Hearing:

— (i) Notice. The parties shall be notified in writing of the date, time, and place of the hearing at least ten days in advance of the hearing. Notice may appear in the notice of agency action, or may appear in a separate notice issued by the presiding officer. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure to appear at the hearing after notice has been given shall be grounds for default and shall waive both the respondent's right to contest the allegations, and his right to the hearing. The presiding officer shall proceed to prepare and serve on respondent his order pursuant to R81-1-7(4)(g).

— (ii) Public Hearing. The hearing shall be open to all parties. It shall also be open to the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in an open hearing is clearly outweighed by factors enumerated in the closure order. The presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

— (iii) Rights of Parties. The presiding officer shall regulate the course of the hearings to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions, present evidence, argue, respond, conduct cross-examinations, and submit rebuttal evidence.

— (iv) Public Participation. The presiding officer may give persons not a party to the adjudication proceeding the opportunity to present oral or written statements at the hearing.

— (v) Rules of Evidence. Technical rules of evidence shall not apply. Any reliable evidence may be admitted subject to the following guidelines. The presiding officer:

— (A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

— (B) shall exclude evidence privileged in the courts of Utah;

— (C) shall recognize presumptions and inferences recognized by law;

— (D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document.

— (E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the agency, and of technical or scientific facts within the agency's specialized knowledge;

— (F) may not exclude evidence solely because it is hearsay; and

— (G) may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

— (H) Oath. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

— (I) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) agency; (2) respondent; (3) intervenors (if any); (4) rebuttal by agency.

— (J) Time limits. The presiding officer may set reasonable time limits for the presentations described above.

— (K) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a party indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the presiding officer when in the public interest.

— (L) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the presiding officer may, in his discretion, permit the parties to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the presiding officer.

— (M) Record of Hearing. The presiding officer shall cause an official record of the hearing to be made, at the agency's expense, as follows:

— (I) The record may be made by means of a certified shorthand reporter employed by the agency or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the agency chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the department. Parties desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

— (II) The record of the proceedings may also be made by means of a tape recorder or other recording device if the agency determines that it is unnecessary or impracticable to employ a certified shorthand reporter or the parties do not desire to employ a certified shorthand reporter.

— (III) Any party, at its own expense, may have a person approved by the agency prepare a transcript of the hearing, subject to any restrictions that the agency is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or tape recording of a hearing is made, it will be available at the department for use of the parties, but may not be withdrawn.

— (IV) The department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

— (N) Failure to appear. Inexcusable failure of the respondent to appear at a scheduled evidentiary hearing after receiving proper notice constitutes an admission of the charged violation. The validity of any hearing is not affected by the failure of any person to attend or remain in attendance pursuant to Section 32A-1-119(4)(c).

— (g) Disposition:

— (i) Presiding Officer's Order; Objections:

— (A) Within a reasonable time of the close of the hearing, or after the filing of any post hearing papers permitted by the presiding officer, the presiding officer shall sign and issue a written order that includes the following:

— (I) the findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on

hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R81-1-7(4)(b)(ii), then the findings of fact shall adopt the allegations in the notice of agency action.

— (II) conclusions of law;

— (III) reasons for the decision;

— (IX) recommendations for final commission action. The order shall not recommend a penalty more severe than that sought in the notice of agency action;

— (V) Notice that a respondent having objections to the presiding officer's order may file written objections with the presiding office within ten days of service of the order setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful, or not supported by the evidence.

— (B) A copy of the presiding officer's order shall be promptly mailed to the parties.

— (C) The presiding officer shall wait ten days from service of his order on respondent for written objections, if any. The presiding officer may then amend or supplement his findings of fact, conclusions of law, and recommendations to reflect those objections which have merit and which are not disputed.

— (D) Upon expiration of the time for filing written objections, the order of the presiding officer and any written objections timely filed, shall be submitted to the commission for final consideration:

— (ii) Commission Action:

— (A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular commission meeting for consideration by the commission. Copies of the order, together with any objections filed by the respondent, shall be forwarded to the commission, and the commission shall finally decide the matter on the basis of the order and any objections submitted.

— (B) The commission shall be deemed a substitute presiding officer for this final stage of the formal adjudicative proceeding pursuant to Sections 63-46b-2(h)(ii) and (iii). This stage is not considered a "review of an order by an agency or a superior agency" under Sections 63-46b-12 and -13.

— (C) No additional evidence shall be presented to the commission. The commission may, at its discretion, permit the parties to present oral presentations.

— (D) After the commission has reached a final decision, it shall issue a signed, written order pursuant to Section 32A-1-119(5) and 63-46b-10(1) that includes:

— (I) findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R81-1-7(4)(b)(ii), then the findings of fact shall adopt the allegations in the notice of agency action and the respondent is considered in default;

— (II) conclusions of law;

— (III) reasons for the decision;

— (IV) action ordered by the commission and effective date of the action taken. The order shall not impose a penalty more severe than that sought in the notice of agency action;

— (V) notice of the right to file a written request for reconsideration within ten days of the service of the order;

~~—(VI) notice of the right to seek judicial review of the order within thirty days of the date of its issuance in the court of appeals in accordance with Sections 32A-1-120 and 63-46b-16, -17, and -18.~~

~~—(E) The commission may adopt in whole or in part, any portion(s) of the initial presiding officer's order.~~

~~—(F) The commission may use its experience, technical competence and specialized knowledge to evaluate the evidence.~~

~~—(G) A copy of the commission's order shall be promptly mailed to the parties.~~

~~—(H) A respondent having objections to the order of the commission may file, within ten days of service of the order, a request for reconsideration with the commission, setting forth the particulars in which the order is unfair, unreasonable, unlawful, or not supported by the evidence. If the request is based upon newly discovered evidence, the petition shall be accompanied by a summary of the new evidence, with a statement of reasons why the respondent could not with reasonable diligence have discovered the evidence prior to the formal hearing, and why the evidence would affect the commission's order.~~

~~—(I) The filing of a request for reconsideration is not a prerequisite for seeking judicial review of the commission's order.~~

~~—(J) Within twenty days of the filing of a request for reconsideration, the commission may issue a written order granting the request or denying the request in whole or in part. If the request is granted, it shall be limited to the matter specified in the order. Upon reconsideration, the commission may confirm its former order or vacate, change or modify the same in any particular, or may remain for further action. The order and decision shall have the same force and effect as the original order.~~

~~—(K) If the commission does not issue an order within twenty days after the filing of the request, the request for reconsideration shall be considered denied.~~

~~—(h) Judicial Review:~~

~~—(i) Respondent may file a petition for judicial review of the commission's final order within thirty days from the date the order is issued.~~

~~—(ii) Appeals from formal adjudicative proceedings shall be to the Utah Court of Appeals in accordance with Sections 63-46b-16, -17, and -18, and Section 32A-1-120.]~~

KEY: alcoholic beverages

[July 1, 1998]2000

Notice of Continuation January 10, 1997

- 32A-1-107**
- 32A-1-119(5)(c)**
- 32A-3-103(1)(a)**
- 32A-4-103(1)(a)**
- 32A-4-203(1)(a)**
- 32A-5-103(3)(c)**
- 32A-6-103(2)(a)**
- 32A-7-103(2)(a)**
- 32A-8-103(1)(a)**
- 32A-9-103(1)(a)**
- 32A-10-203(1)(a)**
- 32A-11-103(1)(a)]**



Commerce, Occupational and Professional Licensing

R156-1-308a

Renewal Dates

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 22645

FILED: 02/01/2000, 16:13

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The division needed to change the month of renewal for professional engineers, professional land surveyors, and professional structural engineers.

SUMMARY OF THE RULE OR CHANGE: The renewal date for professional engineers, professional land surveyors, and professional structural engineers was changed from May 31 of even years to December 31 of even years.

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

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** There will be minimal costs to the division to reprint the rules once this amendment is made effective. Any costs associated with the printing will be absorbed in the division's current budget. There may be potential savings to the state budget due to better and more efficient utilization of division personnel by spreading out the licensing renewal periods.

❖**LOCAL GOVERNMENTS:** The proposed rule does not apply to local governments; therefore, no cost or savings.

❖**OTHER PERSONS:** No costs or savings are anticipated for licensed professional engineers, professional land surveyors, and professional structural engineers as the renewal date is only being changed. The licensees will pay the same renewal fee, but will now pay it in December of each even year instead of May of each even year.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No costs are anticipated for licensed professional engineers, professional land surveyors, and professional structural engineers as the licensees will pay the same renewal fee, but will now pay it in December of each even year instead of May of each even year.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of this proposed amendment is to change the two-year license renewal cycle for professional engineers, professional land surveyors, and professional structural engineers. Instead of renewals in these professions coming on May 31 in even years, they will occur on December 31 of even years. Currently most of the 86 two-year occupational and professional classifications licensed by the division have license cycles ending on May 31, with the only difference

being whether they end in even or odd years. This change will allow for a more efficient utilization of division licensing personnel by transferring some of the professions to off-peak periods of the year. There should be minimal impact on the state budget since the lack of incoming licensing fees in May will be recouped in December. There will be a potential savings to the state budget due to better and more efficient utilization of division personnel by spreading out the licensing renewal periods. There will be no impact upon local governments or the general public. The only impact upon the licensed professionals will be an extended period in the initial year to complete continuing education and the temporary savings of licensing fees--Douglas C. Borba

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

Commerce
Occupational and Professional Licensing
Fourth Floor, Heber M. Wells Building
160 East 300 South
PO Box 146741
Salt Lake City, UT 84114-6741, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
David Fairhurst at the above address, by phone at (801) 530-6621, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.dfairhur@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/16/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2000

AUTHORIZED BY: A. Gary Bowen, Director

R156. Commerce, Occupational and Professional Licensing.
R156-1. General Rules of the Division of Occupational and Professional Licensing.

R156-1-308a. Renewal Dates.

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

TABLE
RENEWAL DATES

(1) Acupuncturist	May 31	even years
(2) Advanced Practice Registered Nurse	January 31	even years
(3) Animal Euthanasia Agency	May 31	odd years
(4) Alternate Dispute Resolution Provdr	September 30	even years
(5) Analytical Laboratory	May 31	odd years
(6) Architect	May 31	even years
(7) Audiologist	May 31	odd years
(8) Boxing Licensee	December 31	every year
(9) Branch Pharmacy	May 31	odd years
(10) Building Inspector	July 31	odd years
(11) Burglar Alarm Security	July 31	even years
(12) C.P.A. Firm	September 30	even years
(13) Certified Shorthand Reporter	May 31	even years
(14) Certified Dietitian	September 30	even years
(15) Certified Nurse Midwife	January 31	even years

(16) Certified Public Accountant	September 30	even years
(17) Certified Registered Nurse Anesthetist	January 31	even years
(18) Certified Social Worker	September 30	even years
(19) Chiropractic Physician	May 31	even years
(20) Clinical Social Worker	September 30	even years
(21) Construction Trades Instructor	July 31	odd years
(22) Contractor	July 31	odd years
(23) Controlled Substance Precursor Distributor	May 31	odd years
(24) Controlled Substance Precursor Purchaser	May 31	odd years
(25) Cosmetologist/Barber	September 30	odd years
(26) Cosmetology/Barber School	September 30	odd years
(27) Deception Detection	July 31	even years
(28) Dental Hygienist	May 31	even years
(29) Dentist	May 31	even years
(30) Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	July 31	even years
(31) Electrolgist	September 30	odd years
(32) Environmental Health Scientist	May 31	odd years
(33) Factory Built Housing Dealer	September 30	even years
(34) Funeral Service Director	May 31	even years
(35) Funeral Service Establishment	May 31	even years
(36) Health Care Assistant	November 30	even years
(37) Health Facility Administrator	May 31	odd years
(38) Hearing Instrument Specialist	September 30	even years
(39) Hospital Pharmacy	May 31	odd years
(40) Institutional Pharmacy	May 31	odd years
(41) Landscape Architect	May 31	even years
(42) Licensed Practical Nurse	January 31	even years
(43) Licensed Substance Abuse Counselor	May 31	odd years
(44) Marriage and Family Therapist	September 30	even years
(45) Massage Apprenti ce, Therapist	May 31	odd years
(46) Naturopath/Naturopathic Physician	May 31	even years
(47) Nuclear Pharmacy	May 31	odd years
(48) Occupational Therapist	May 31	odd years
(49) Occupational Therapy Assistant	May 31	odd years
(50) Optometrist	September 30	even years
(51) Osteopathic Physician and Surgeon	May 31	even years
(52) Out of State Mail Order Pharmacy	May 31	odd years
(53) Pharmaceuti cal Administration Facility	May 31	odd years
(54) Pharmaceuti cal Dog Trainer	May 31	odd years
(55) Pharmaceuti cal Manufacturer	May 31	odd years
(56) Pharmaceuti cal Researcher	May 31	odd years
(57) Pharmaceuti cal Teaching Organization	May 31	odd years
(58) Pharmaceuti cal Wholesaler/Di stributor	May 31	odd years
(59) Pharmacist	May 31	odd years
(60) Pharmacy Technician	May 31	odd years
(61) Physical Therapist	May 31	odd years
(62) Physi cian Assistant	May 31	even years
(63) Physi cian and Surgeon	January 31	even years
(64) Plumber Apprentice, Journeyman, Residential Apprentice, Residential Journeyman	July 31	even years
(65) Podi atric Physi cian	September 30	even years
(66) Pre Need Funeral Arrangement Provi der	May 31	even years

(67)	Pre Need Funeral Arrangement Sales Agent	May 31	even years
(68)	Private Probation Provider	May 31	odd years
(69)	Professional Counselor	September 30	even years
(70)	Professional Employer Organization	September 30	every year
(71)	Professional Engineer	May December 31	even years
(72)	Professional Land Surveyor	May December 31	even years
(73)	Professional Structural Engineer	May December 31	even years
(74)	Psychologist	September 30	even years
(75)	Radiology Practical Technician	May 31	odd years
(76)	Radiology Technologist	May 31	odd years
(77)	Recreational Therapy Technician, Specialist, Master Specialist	May 31	odd years
(78)	Registered Nurse	January 31	odd years
(79)	Respiratory Care Practitioner	September 30	even years
(80)	Retail Pharmacy	May 31	odd years
(81)	Security Personnel	July 31	even years
(83)	Social Service Worker	September 30	even years
(84)	Speech-Language Pathologist	May 31	odd years
(85)	Veterinarian	September 30	even years
(86)	Veterinary Pharmaceutical Outlet	May 31	odd years

KEY: diversion programs, licensing, occupational licensing
~~December 16, 1999~~ **2000** **58-1-106(1)**
Notice of Continuation June 2, 1997 **58-1-308**

◆ _____ ◆

Commerce, Real Estate
R162-10
Administrative Procedures

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 22624
 FILED: 01/28/2000, 10:43
 RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To clarify that an adjudicative proceeding shall be conducted on an informal basis in the case of whether or not a licensee or certificate holder who renewed on a probationary status has violated the condition of the probation.

SUMMARY OF THE RULE OR CHANGE: An adjudicative proceeding shall be conducted on an informal basis in the case of whether or not a licensee or certificate holder who renewed on a probationary status has violated the condition of the probation.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 61, Chapter 2b

ANTICIPATED COST OR SAVINGS TO:
 ♦THE STATE BUDGET: Trivial effect on state budget as the rule change just clarifies under what circumstances an informal hearing is held. The state will be saved the expense and

effort of a formal hearing for probation violations. The time saved will be used to do more investigations.

♦LOCAL GOVERNMENTS: Trivial effect on local government as the rule change just clarifies under what circumstances an informal hearing is held.

♦OTHER PERSONS: Little or no effect on other persons as the rule change just clarifies under what circumstances an informal hearing is held.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This change will save the probated licensee the costs of a formal adjudicative hearing. The licensee will be saved the cost and inconvenience of a long formal hearing for a minor probation violation. The cost saving will vary from individual to individual and cannot be estimated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Provides express authority to conduct probation violation hearings informally.

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

Commerce
 Real Estate
 Second Floor, Heber M. Wells Building
 160 East 300 South
 PO Box 146711
 Salt Lake City, UT 84114-6711, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Karen Post at the above address, by phone at (801) 530-6753, by FAX at (801) 530-6749, or by Internet E-mail at kpost@br.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/16/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2000

AUTHORIZED BY: Theodore "Ted" Boyer, Jr., Director

R162. Commerce, Real Estate.

R162-10. Administrative Procedures.

R162-10-1. Formal Adjudicative Proceedings.

10.1. Any adjudicative proceeding as to the following matters shall be conducted on a formal basis:

10.1.1. Except as otherwise expressly provided herein, the revocation, suspension or probation of a real estate license, school or instructor certification or fine levied against a licensee.

10.1.2. The revocation, suspension or probation of any registration issued pursuant to the Time Share and Camp Resort Act.

10.1.3. Any proceedings conducted subsequent to the issuance of cease and desist orders.

R162-10-2. Informal Adjudicative Proceedings.

10.2. Any adjudicative proceedings as to the following matters shall be conducted on an informal basis:

10.2.1. The issuance of a real estate license, the renewal of an active, inactive or expired license, or the activation of an inactive license.

10.2.2. Any action on a sales agent's license based upon the revocation or suspension of a principal broker's license or the failure of the principal broker to renew his license.

10.2.3. The issuance of renewal or certification of real estate schools or instructors.

10.2.4. The revocation of a real estate license due to payment made from the Real Estate Recovery Fund.

10.2.5. The issuance, renewal, suspension or revocation of registration pursuant to the Land Sales Practices Act.

10.2.6. The exemption from, or the amendment of, registration pursuant to the Land Sales Practices Act.

10.2.7. The issuance or renewal of any registration pursuant to the Time Share and Camp Resort Act.

10.2.8. Any waiver of, or exemption from, registration requirements pursuant to the Time Share and Camp Resort Act.

10.2.9. The issuance of any declaratory order determining the applicability of a statute, rule or order when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the Division of Real Estate.

10.2.10. The post-revocation hearing following the revocation of license pursuant to Utah Code Section 61-2-9(1)(e)(i) for failure to accurately disclose a criminal history.

10.2.11. A hearing on whether or not a licensee or certificate holder whose license or certificate was issued or renewed on probationary status has violated the condition of that probation.

R162-10-3. Proceedings Not Designated.

10.3. All adjudicative proceedings as to any other matters not specifically listed herein shall be conducted on an informal basis.

KEY: real estate business

~~[April 23, 1998]~~2000

Notice of Continuation December 1, 1995

61-2-5.5

63-46b-1(5)



Commerce, Real Estate
R162-105
Scope of Authority

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE No.: 22625
FILED: 01/28/2000, 10:43
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To clarify who is eligible to serve as an unclassified appraiser.

SUMMARY OF THE RULE OR CHANGE: Any appraiser whose certification, license, or registration has been revoked, suspended, or surrendered as a result of an investigation by the division is not eligible to serve as an unclassified appraiser for a period of five years after the action, nor may a licensed or certified appraiser employ or supervise him for the same period of time.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 61, Chapter 2b

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** Little or no effect on state budget, as unclassified appraisers do not pay fees to the state. The saving to the state is not monetary, but is rather an increased measure of public protection in prohibiting violators from immediately relicensing and continuing their illegal practices.

❖**LOCAL GOVERNMENTS:** Little or no effect on local government as unclassified appraisers do not pay fees to local government.

❖**OTHER PERSONS:** It will protect the public from previously disciplined appraisers, but will prohibit such appraisers from working in this profession for the five-year period. A similar rule applies to real estate licensees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It will protect the public from losses caused by unscrupulous appraisers who have been disciplined, but will prevent those same appraisers from working as appraisers for a period of time. Serious offenders will not be able to resume their work as a licensee until five years have passed and will therefore need to locate other employment for that period of time. The cost cannot be estimated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This will increase the deterrent effect of license revocation and will result in greater public protection.

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

Commerce
Real Estate
Second Floor, Heber M. Wells Building
160 East 300 South
PO Box 146711
Salt Lake City, UT 84114-6711, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Karen Post at the above address, by phone at (801) 530-6753, by FAX at (801) 530-6749, or by Internet E-mail at kpost@br.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/16/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2000

AUTHORIZED BY: Theodore "Ted" Boyer, Jr., Director

R162. Commerce, Real Estate.

R162-105. Scope of Authority.

R162-105-1. Scope of Authority.

105.1 Transaction value. "Transaction value" means:

105.1.1 For loans or other extensions of credit, the amount of the loan or extension of credit;

105.1.2 For sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and

105.1.3 For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

105.2 State-Licensed Appraisers. In federally-related transactions, the Utah Real Estate Appraiser Licensing Act and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and related federal regulations allow State-Licensed Appraisers to perform the appraisal of non-complex one to four residential units having a transaction value of less than \$250,000.

105.2.1 Subject to the transaction value limits in Section 105.2, State-Licensed Appraisers may also perform appraisals in federally-related transactions of vacant or unimproved land that is utilized for one to four family purposes, or for which the highest and best use is 1-4 family purposes, so long as net income capitalization analysis is not required by the terms of the assignment.

105.2.2 State-Licensed Appraisers may not perform appraisals of subdivisions in federally-related transactions for which a development analysis/appraisal is necessary or for which discounted cash flow analysis is required by the terms of the assignment.

105.3 Unclassified individuals.

105.3.1 Unclassified individuals who have not yet accumulated 100 experience points and successfully completed the education required for licensure may perform the following duties under the direct supervision of a state-licensed or state-certified appraiser: typing an appraiser's research notes; typing an appraisal report; accompanying an appraiser on an inspection visit to a property; assisting an appraiser in measuring a property; taking photographs of specific properties selected by the appraiser; performing routine calculations; and obtaining copies of assessment records, deeds, maps, and data from real property data bases relating to properties selected by the appraiser.

105.3.1.1 Unclassified individuals who have not yet accumulated 100 experience points and successfully completed the education required for licensure may not participate in: selecting comparables for an appraisal assignment; making adjustments to comparables; drafting an appraisal report; and, except when working in the presence of a state-licensed or state-certified appraiser, inspecting a property that is the subject of an appraisal or that may be used as a comparable in an appraisal, or measuring a property.

105.3.2 Unclassified individuals who have accumulated 100 experience points and successfully completed at least 30 hours of the education required for licensure may act in the capacity of an appraisal "trainee" under the direct supervision of a state-licensed or state-certified appraiser. A "trainee" is permitted to have more than one supervising appraiser.

105.3.2.1 An appraiser "trainee" may, under the direct supervision of a state-licensed or state-certified appraiser, participate in selecting comparables for an appraisal assignment, participate in making adjustments to comparables, draft appraisal reports, and when working in the presence of a state-licensed or state-certified appraiser, inspect a property that is the subject of an appraisal or that may be used as a comparable in an appraisal, and measure a property.

105.3.3 All unclassified individuals are prohibited from signing an appraisal report or discussing an appraisal assignment with anyone other than the appraiser responsible for the assignment, state enforcement agencies and such third parties as may be authorized by due process of law, or a duly authorized professional peer review committee.

105.3.4 A classified appraiser who supervises an unclassified individual shall be responsible for the training and direct supervision of the unclassified individual and shall require the unclassified appraiser to maintain a log in form satisfactory to the Board which shall contain, at minimum, the following information for each appraisal:

105.3.4.1 Type of property;

105.3.4.2 Client name and address;

105.3.4.3 Address of appraised property;

105.3.4.4 Description of work performed;

105.3.4.5 Number of work hours;

105.3.4.6 Signature and state license/certification number of the supervising appraiser.

105.3.4.7 The unclassified individual shall maintain a separate appraisal log for each supervising appraiser.

105.4. Unless otherwise ordered by the Board, any appraiser whose appraiser certification, license, or registration has been revoked or suspended by the Board, or who has surrendered a certification, license, or registration as a result of an investigation by the Division, may not serve as an unclassified appraiser for a period of five years after the date of the revocation or surrender, nor may a licensed or certified appraiser employ or supervise him during that period in the activities permitted unclassified persons.

KEY: real estate appraisal

[July 16, 1999]2000

61-2b



**Commerce, Real Estate
R162-106
Professional Conduct**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 22626

FILED: 01/28/2000, 10:43

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To clarify record-keeping requirements.

SUMMARY OF THE RULE OR CHANGE: Defines that a true copy of an appraisal report (which an appraiser is required to keep) shall be a photocopy or other exact copy as provided to the client.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 61, Chapter 2b

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** State budget will not be affected by this change, as the rule merely clarifies the definition of a true copy of an appraisal report, which is kept by individual licensees. If an appraiser does not retain a signed copy of the appraisal report and a complaint is received, the division has to subpoena the report from the appraiser's client at additional expense and effort. The cost saving to the division is phantom in that we will use the same resources to do more investigations.

❖**LOCAL GOVERNMENTS:** Local government will not be affected by this change as the rule merely clarifies the definition of a true copy of an appraisal report, which is kept by individual licensees.

❖**OTHER PERSONS:** Little effect on other persons, as the rule merely clarifies the definition of a true copy of an appraisal report, which is kept by individual licensees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Trivial effect upon affected persons, the rule amendment clarifies record-keeping requirements for appraisers. May cost slightly more for appraisers to keep photocopies of appraisal reports. The cost to the affected person is the nominal cost of printing a file copy of the report.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Will not significantly impact business fiscally, either in additional costs or savings.

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

Commerce
Real Estate
Second Floor, Heber M. Wells Building
160 East 300 South
PO Box 146711
Salt Lake City, UT 84114-6711, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Karen Post at the above address, by phone at (801) 530-6753, by FAX at (801) 530-6749, or by Internet E-mail at kpost@br.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/16/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2000

AUTHORIZED BY: Theodore "Ted" Boyer, Jr., Director

R162. Commerce, Real Estate.

R162-106. Professional Conduct.

R162-106-1. Uniform Standards.

106.1. As required by the Appraisal Foundation in accordance with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), all licensees must comply with the edition of the Uniform Standards of Professional Appraisal Practice (USPAP) currently approved by the Board. Information on which version of USPAP is currently approved by the Board may be obtained from the division. All persons registered, licensed or certified under this chapter must also observe the Advisory Opinions of USPAP. Copies of USPAP may be obtained from the Appraisal Foundation, 1029 Vermont Avenue N.W., Suite 900, Washington, D.C. 20005. Registered, licensed and certified appraisers and candidates for registration, licensure or certification may obtain copies from the division.

R162-106-2. Use of Terms.

106.2. The terms "State-Certified Residential Appraiser," "State-Certified General Appraiser," "State-Licensed Appraiser and "State-Registered Appraiser" shall not be abbreviated or reduced to a letter or group of letters. If these terms are used on letterhead or in advertising, the appraiser's certificate number, license number or registration number must follow his name.

R162-106-3. Signatures, Size and Use of Seal.

106.3.1. State-Certified Appraiser's Seal.

106.3.1.1. When signing a certified appraisal report, State-Certified General Appraisers and State-Certified Residential Appraisers shall place on at least the certification page of the appraisal report, immediately below the appraiser's signature, the seal required by Section 61-2b-17(3)(e).

106.3.1.2. The seal to be affixed on reports prepared by state-certified appraisers shall contain the words "Utah State-Certified Residential Appraiser" or "Utah State-Certified General Appraiser" along with the appraiser's certificate number and expiration date. The zeros preceding the certificate number may be deleted. The size of the seal, rectangular in shape, shall be no larger than two and seven-eighths inches long and five-eighths of an inch high including the border. An example of the seal shall be made available on request at the Division offices.

106.3.1.3. The seal may be reproduced as a stamp with ink that can be copied, or may be inserted by computer in an appraisal report at the appropriate place.

106.3.2. State-Registered and State-Licensed Appraisers. State-registered appraisers and State-Licensed appraisers may not place a seal on an appraisal report or use a seal in any other manner likely to create the impression that the appraiser is a state-certified appraiser.

106.3.2.1. If a State-Registered Appraiser or a State-Licensed Appraiser prepares an appraisal report which exceeds the dollar amount permitted under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations, the appraiser shall include after the appraiser's signature the words, "This appraisal does not qualify for federally related transactions."

106.3.2.1.1. This requirement does not apply if the State-Registered Appraiser or State-Licensed Appraiser has prepared the

report under the direct supervision of a state-certified appraiser and the state-certified appraiser has signed the appraisal report taking responsibility for the report.

106.3.3. Signatures.

106.3.3.1. Signature stamps. Appraisers may not affix their signatures to appraisal reports by means of a signature stamp.

106.3.3.2. Digital signatures. A digital signature may be used in place of a handwritten signature only if: a) the software program which generates the digital signature has a security feature; and b) the appraiser ensures that his signature is protected and that no one other than the appraiser has control of that signature.

R162-106-4. Testimony by an Appraiser.

106.4. Testimony. An appraiser who testifies as to an appraisal opinion in a deposition or an affidavit, or before any court, public body, or hearing officer, shall prepare a written appraisal report or a file memorandum prior to giving such testimony.

106.4.1. File memoranda. For the purpose of this rule, a file memorandum shall include work sheets, data sheets, the reasoning and conclusions upon which the testimony is based, and other sufficient information to demonstrate substantial compliance with USPAP Standards Rule 2-2, or in the case of mass appraisal, Standards Rule 6-7.

R162-106-5. Failure to Respond to Investigation.

106.5. When the Division notifies an appraiser or registered expert witness of a complaint, the notified individual must respond to the complaint in writing within ten business days of the notice from the Division. Failure to respond within the required time period to a notice of complaint, a subpoena, or any written request for information from the Division shall be considered a violation of these rules and separate grounds for disciplinary action against the appraiser or registered expert witness.

R162-106-6. Recordkeeping Requirements.

106.6. The true copy of an appraisal report which an appraiser is required by Section 61-2b-34(1) to retain shall be a photocopy or other exact copy of the report as it was provided to the client, including the appraiser's signature.

KEY: real estate appraisal, conduct

[July 16, 1999]2000

Notice of Continuation April 1, 1997

61-2b-27



Commerce, Securities

R164-2

Investment Adviser - Unlawful Acts

NOTICE OF PROPOSED RULE

(New)

DAR FILE NO.: 22642

FILED: 02/01/2000, 15:34

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To enable investment advisers to receive performance-based compensation for investment advisory services.

SUMMARY OF THE RULE OR CHANGE: Subsection 61-1-2(2) prohibits investment advisers from entering into performance-based compensation contracts unless the division, by rule, enables the practice. This rule enables investment advisers to enter into performance-based compensation contracts for investment advisory services under certain conditions.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-1-24, and Subsection 61-1-2(2)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Investment Company Act of 1940, Section 2(a)(3) (see 15 U.S.C. 80a-2(a)(3)); Investment Advisers Act of 1940, Section 202(a)(22) (see 15 U.S.C. 80b-2(a)(22)); 17 CFR 270.2a-4(a)(1) (1999)

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** This rule will not cost or save the state budget any money. This rule merely permits a class of licensees to enter into performance-based contracts with clients under certain conditions. This rule will not require any staff resources to administer or monitor since this benefit is self-executing.

❖**LOCAL GOVERNMENTS:** This rule will not cost or save local government any money. Local governments do not regulate securities. This rule merely permits a class of licensees to enter into performance-based contracts with clients under certain conditions. This rule will not require any local government resources to administer or monitor since local governments have no involvement in administering the licensing laws and rules regarding investment advisers.

❖**OTHER PERSONS:** This rule will increase compensation for some investment advisers. The division has no way to calculate the amount of increased compensation because there is no way to: 1) calculate how many investment advisers will use performance-based contracts; 2) determine, among those investment advisers that will use performance-based contracts, how many clients will choose to enter into such agreements; 3) know what terms investment advisers will put into the contracts since they will be negotiated at arms length between the investment adviser and clients; and 4) determine how the regulated professional will perform under such a contract.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. This rule provides a benefit to investment advisers, which could increase their compensation. Without this rule they would not be permitted to engage in performance-based contracts. This exception to the general rule is self-executing and the rule does not require any type of filing or follow up with the state on behalf of the licensee.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is proposed to allow investment advisers to enter into performance-based contracts under certain conditions. Such a rule is required

since the statute precludes such contracts unless specifically allowed by division rule. The adoption of this rule will not impact the state budget or local governments. The regulated professionals operating under a performance-based contract will have the potential of increased earnings, but it is impossible to calculate the impact since the earnings will be dependent upon the terms of the contract and the performance of the regulated professional under that contract.

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

Commerce
Securities
Second Floor, Heber M. Wells Building
160 East 300 South
PO Box 146760
Salt Lake City, UT 84114-6760, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

S. Anthony Taggart at the above address, by phone at (801) 530-6600, by FAX at (801) 530-6980, or by Internet E-mail at taggart@br.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/16/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2000

AUTHORIZED BY: S. Anthony Taggart, Director

R164. Commerce, Securities.

R164-2. Investment Adviser - Unlawful Acts.

R164-2-1. Investment Adviser Performance-Based Compensation Contracts.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-2 and 61-1-24.

(2) This rule sets the requirements whereby an investment adviser may receive performance-based compensation for investment advisory services rendered.

(B) Definitions

(1) "Affiliate" has the same definition as in Section 2(a)(3) of the Investment Company Act of 1940, which is adopted and incorporated by reference and available from the Division.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "Company" means a corporation, partnership, association, joint stock company, trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under title 11 of the United States Code, or similar official or any liquidating agent for any of the foregoing, in his capacity as such. "Company" shall not include:

(3)(a) a company required to be registered under the Investment Company Act of 1940, but which is not so registered;

(3)(b) a private investment company, for purposes of this subparagraph a private investment company is a company which

would be defined as an investment company under Section 3(a) of the Investment Company Act of 1940 but for the exception from that definition provided by Section 3(c)(1) of that act;

(3)(c) an investment company registered under the Investment Company Act of 1940; or

(3)(d) a business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, which is adopted and incorporated by reference and available from the Division, unless each of the equity owners of any such company, other than the investment adviser entering into the contract, is a natural person or company within the meaning of subparagraph (B)(4) of this rule.

(4) "Interested person" means:

(4)(a) any member of the immediate family of any natural person who is an affiliated person of the investment adviser;

(4)(b) any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment adviser or by a controlling person of the investment adviser if that beneficial or legal interest exceeds:

(4)(b)(i) 1/10 of 1% of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser, or

(4)(b)(ii) 5% of the total assets of the person seeking to act as the client's independent agent; or.

(4)(c) any person or partner or employee of any person who, at any time since the beginning of the last two years, has acted as legal counsel for the investment adviser.

(5) "SEC" means the United States Securities and Exchange Commission.

(C) Performance-based contract exemption

(1) Notwithstanding Subsection 61-1-2(2), an investment adviser may enter into, extend or renew an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client if the conditions in paragraphs (D) through (I) of this rule are met.

(D) Client requirements

(1) The client entering into the contract must be:

(1)(a) a natural person or a company who, immediately after entering into the contract, has at least \$750,000 under the management of the investment adviser;

(1)(b) a person who the investment adviser and its investment adviser representatives reasonably believe, immediately before entering into the contract, is a natural person or a company whose net worth, at the time the contract is entered into, exceeds \$1,500,000. The net worth of a natural person may include assets held jointly with that person's spouse;

(1)(c) a qualified purchaser as defined in section 2(a)(51)(A) of the Investment Company Act of 1940 at the time the contract is entered into; or

(1)(d) a natural person who immediately prior to entering into the contract is:

(1)(d)(i) An executive officer, director, trustee, general partner, or person serving in a similar capacity of the investment adviser; or

(1)(d)(ii) An employee of the investment adviser (other than an employee performing solely clerical, secretarial or administrative functions with regard to the investment adviser) who, in connection

with his or her regular functions or duties, participated in the investment activities of such investment adviser, provided that such employee has been performing such functions and duties for or on behalf of the investment adviser, or substantially similar functions or duties for or on behalf of another company for at least 12 months.

(E) Compensation formula

(1) The compensation paid to the investment adviser with respect to the performance of any securities over a given period must be based on a formula with the following characteristics:

(1)(a) In the case of securities for which market quotations are readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270.2a-4(a)(1) (1999) which is adopted and incorporated by reference and available from the Division, the formula must include the realized capital losses and unrealized capital depreciation of the securities over the period;

(1)(b) In the case of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 the formula must include:

(1)(b)(i) the realized capital losses of securities over the period, and

(1)(b)(ii) if the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and,

(1)(c) the formula must provide that any compensation paid to the investment adviser under this rule is based on the gains less the losses, computed in accordance with subparagraphs (a) and (b) of this subparagraph (E), in the client's account for a period of not less than one year.

(F) Additional disclosure requirements

(1) Before entering into the advisory contract and in addition to the requirements of SEC Form ADV - Uniform Application for Investment Adviser Registration, the investment adviser must disclose in writing to the client all material information concerning the proposed advisory arrangement, including the following:

(1)(a) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

(1)(b) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

(1)(c) The periods which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;

(1)(d) The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate; and,

(1)(e) Where the investment adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 how the securities will be valued and the extent to which the valuation will be independently determined.

(G) Arms length agreement

(1) The investment adviser, and any investment adviser representative, who enters into the contract must reasonably believe, immediately before entering into the contract that the contract

represents an arm's length arrangement between the parties and that the client, or in the case of a client which is a company as defined in subparagraph (B)(3) of this rule, the person representing the company, understands the proposed method of compensation and its risks.

(2) The representative of a company may be a partner, director, officer or an employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee.

(H) Unlawful acts

(1) Any person entering into or performing an investment advisory contract under this rule is not relieved of any obligations under Subsection 61-1-2(1) or any other applicable provision of the Utah Uniform Securities Act or any rule or order thereunder.

**KEY: securities, securities regulation
2000**

**61-1-2
61-1-24**



**Commerce, Securities
R164-4
Licensing Requirements**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 22643

FILED: 02/01/2000, 15:34

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To codify existing practices and to make technical changes.

SUMMARY OF THE RULE OR CHANGE: The rule was reorganized. Most of the changes are due to the fact that the investment adviser and investment adviser representative renewal requirements were combined into one requirement to reflect the current practice of how the industry handles renewals. The examination requirements were also modified to adopt the North American Securities Administrators Association (NASAA) model rule. The only substantive change was to add a grandfathering provision and one new waiver designation. Numerous technical changes were also made.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The changes will not cost or save the state budget any money. The changes are primarily organizational and technical. The new waiver designation will enable a person with that designation to become licensed without showing a passing grade on the Series 65 exam. Such waiver will not cost or save the state any money.

❖LOCAL GOVERNMENTS: The changes will not cost or save local government any money. Local government is not involved in the licensing of securities professionals.

❖OTHER PERSONS: The changes will not cost other persons any money. Most of the changes are technical in nature. The only substantive change will save those persons that have such a designation \$110, which represents the cost to take the Series 65 exam. It is estimated that 10 people per year will reap this savings for a total of \$1,100 in savings annually.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These changes will not cost affected persons. Most of the changes are technical in nature. The only substantive provision will save affected persons rather than creating a cost.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of this rule is to conform the renewal requirements for investment advisers to reflect the current practice within the industry, with the present requirements being combined into a single requirement. The rule also incorporates a modification to adopt the NASAA model rule for examination. Several nonsubstantive technical changes are also included, and there is a grandfathering and additional waiver designation included. The adoption of this rule will not impact the state budget or local governments. The proposed rule will also have no financial impact upon the regulated professionals.

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

Commerce
Securities
Second Floor, Heber M. Wells Building
160 East 300 South
PO Box 146760
Salt Lake City, UT 84114-6760, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

S. Anthony Taggart at the above address, by phone at (801) 530-6600, by FAX at (801) 530-6980, or by Internet E-mail at ttaggart@br.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/16/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2000

AUTHORIZED BY: S. Anthony Taggart, Director

R164. Commerce, Securities.

R164-4. Licensing Requirements.

R164-4-1. Broker-Dealer, Broker-Dealer Agent, and Issuer-Agent Licensing Requirements.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule sets forth the procedure and requirements to license as a broker-dealer, broker-dealer agent, or issuer-agent.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "CRD" means the Central Registration Depository.

(3) "NASD" means the National Association of Securities Dealers.

(4) "NASAA" means the North American Securities Administrators Association, Inc.

(5) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-dealer licensing, post licensing, renewal, and withdrawal requirements

(1) License requirements

(1)(a) To license as a broker-dealer, applicant must be a member of the NASD and ~~file with~~ submit to the CRD the following ~~with original signatures as applicable~~:

(1)(a)(i) SEC Form BD - Uniform Application for Broker-Dealer Registration;

(1)(a)(ii) application for a license as an agent in Utah, as specified in paragraph (D), for each principal, officer, agent or employee who directly supervises, or will directly supervise, any licensed agent associated with applicant in Utah; and

(1)(a)(iii) a license fee as specified in the Division's fee schedule, and in the form of payment prescribed by the CRD.

~~(1)(b) If applicant has or will have an office in Utah, applicant must file with the Division a Certificate of Authority to do business in Utah, available from the Division of Corporations and Commercial Code of the Utah Department of Commerce;~~

~~(1)(c)(1)(b) A certificate of license will not be issued. Proof of status is available from the CRD.~~

(2) Post-licensing requirements

(2)(a) Applicant must file amendments to SEC Form BD with the CRD only.

(2)(b) Applicant must file SEC Form X-17A-5, FOCUS reports in a timely manner with the NASD. However, the Division may request applicant to provide a copy of the FOCUS Report.

(3) License renewal requirements

(3)(a) All licenses expire on December 31 of each year.

(3)(b) To renew license, applicant must submit to the CRD the license fee specified in the Division's fee schedule before December 31 ~~to the CRD~~.

(4) License or application withdrawal requirements

(4)(a) To withdraw a license or application, applicant must file with the CRD, or with the Division if not required by the CRD, SEC Form BDW - Uniform Request for Withdrawal from Registration as a Broker-Dealer.

(4)(b) A withdrawal is effective 30 days following receipt of SEC Form BDW, unless the Division notifies applicant otherwise.

(D) Broker-dealer agent licensing, renewal, and withdrawal requirements

(1) License requirements

(1)(a) To license as a broker-dealer agent, applicant or the sponsoring broker-dealer must ~~file with~~ submit to the CRD the following, in addition to any information required by the NASD, the CRD, or the SEC:

(1)(a)(i) NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer;

(1)(a)(ii) proof that applicant passed the Series 63, Uniform Securities Agent State Law Examination (Series 63 Exam), or the

Series 66, Uniform Combined State Law Examination (Series 66 Exam), which [is]are administered by the NASD, and any other exams required by the SEC or the NASD; and

(1)(a)(iii) a license fee as specified in the Division's fee schedule, and in the form of payment prescribed by the CRD.

(1)(b) A certificate of license will not be issued. Proof of status is available from the CRD.

(2) License renewal requirements

(2)(a) All licenses expire on December 31 of each year.

(2)(b) To renew license, applicant must submit to the CRD the ~~[renewal]~~license fee specified in the Divisions fee schedule before December 31 ~~[to the CRD]~~.

(3) License or application withdrawal requirements

(3)(a) To withdraw a license or application, applicant must file with the CRD, NASD Form U-5 - Uniform Termination Notice for Securities Industry Registration.

(3)(b) A withdrawal is effective 30 days following receipt of NASD Form U-5, unless the Division notifies applicant otherwise.

(4) Miscellaneous provisions

(4)(a) Except as provided in subparagraph (D)(4)(b), applicant may associate with only one broker-dealer at ~~[one]~~a time.

(4)(b) A dual license may be allowed by the director if:

(4)(b)(i) applicant requests a dual license in ~~[a]~~writing to the Division which identifies the broker-dealers with which applicant will associate and sets forth the reasons for the dual license;

(4)(b)(ii) both broker-dealers with which applicant intends to associate represent in writing to the Division that each assumes full responsibility for applicant at all times; and

(4)(b)(iii) applicant discloses the dual license to each client.

(E) Issuer-agent licensing, renewal, and withdrawal requirements

(1) License requirements

(1)(a) To license as an issuer-agent, applicant or the sponsoring issuer must ~~[file with]~~submit to the Division the following:

(1)(a)(i) NASD Form U-4 with original signatures;

(1)(a)(ii) proof that applicant passed the Series 63 Exam or the Series 66 Exam;

(1)(a)(iii) a license fee as prescribed in the Division's fee schedule; and

(1)(a)(iv) a surety bond if required by Section R164-11-1. ~~]~~

~~— (1)(b) A certificate of license will not be issued:]~~

(2) License renewal requirements

(2)(a) All licenses expire on December 31 of each year.

(2)(b) To renew license, applicant must ~~[file]~~submit to the Division the following ~~[with the Division]~~ before December 31 of each year:

(2)(b)(i) NASD Form U-4 with original signatures; and

(2)(b)(ii) The ~~[renewal]~~license fee specified in the Division's fee schedule.

(3) License or application withdrawal requirements

(3)(a) To withdraw a license or application, applicant must file with the Division a written request for withdrawal ~~[with the Division]~~ or NASD Form U-5.

(3)(b) A withdrawal is effective thirty days following receipt of the written request for withdrawal, unless the Division notifies applicant otherwise.

(4) Miscellaneous provisions

(4)(a) If applicant applies for a license two or more times in a twelve-month period, the Division deems applicant to be a broker-dealer. Applicant must then license as a broker-dealer.

R164-4-2. Investment Adviser and Investment Adviser Representative Licensing Requirements.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule sets forth the procedure and requirements to license as an investment adviser and investment adviser representative.

(B) Definitions

(1) "Designated Official" means a person that is a partner, officer, director, sole proprietor, or a person occupying a similar status or performing similar functions in an investment adviser firm.

~~[(1)](2)~~ "Division" means the Division of Securities, Utah Department of Commerce.

~~[(2)](3)~~ "Fee" means any remuneration received, directly or indirectly, for investment advice given or investment advisory services rendered, including, among other things, charges for a publication which includes investment advice and commissions paid or received when securities are purchased or sold as a result of investment advice given or investment advisory services rendered. ~~[Licensing]~~License fees referred to in this rule are not included.

~~[(3)](4)~~ "Investment advice" or "investment advisory services" means advice given or services rendered concerning the value of securities or as to the advisability of investing in, or purchasing or selling securities.

~~[(4)](5)~~ "NASAA" means the North American Securities Administrators Association, Inc.

~~[(5)](6)~~ "NASD" means the National Association of Securities Dealers.

~~[(6)](7)~~ "SEC" means the United States Securities and Exchange Commission.

~~[(7)](8)~~ "SIPC" means the Securities Investor Protection Corporation.

~~[(C)]~~ Investment adviser licensing, renewal, and withdrawal requirements

~~— (1) Licensing requirements~~

~~— (1)(a) To license as an investment adviser, applicant must file with the Division the following with original signatures as applicable:~~

~~— (1)(a)(i) SEC Form ADV - Uniform Application for Investment Adviser Registration, including applicant's audited balance sheet if required under item 14 of part II of Form ADV;~~

~~— (1)(a)(ii) NASAA Form U-2 - Uniform Consent to Service of Process;~~

~~— (1)(a)(iii) Division Form 4-5BIA - Indemnity Bond of Investment Adviser, if required by Section R164-4-5, or proof of membership in SIPC;~~

~~— (1)(a)(iv) NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer;~~

~~— (1)(a)(v) proof that applicant or applicant's designated official, if applicant is a partnership or corporation;~~

~~— (1)(a)(v)(aa) passed the Series 65, Uniform Investment Adviser Law Exam (Series 65 Exam), or the Series 66, Uniform Combined State Law Examination (Series 66 Exam), which are administered by the NASD;~~

— (1)(a)(v)(bb) the Division will consider applicant's request for waiver of this requirement if, prior to April 23, 1990, applicant was licensed as an investment adviser in another jurisdiction, with the Securities and Exchange Commission, or if applicant submits other evidence, satisfactory to the Division, of applicant's knowledge of the law pertaining to investment advisers and of applicant's competence to supervise investment adviser representatives.

— (1)(a)(vi) a certificate of authority to do business in Utah, available from the Division of Corporations and Commercial Code of the Utah Department of Commerce, if applicant is an out-of-state investment adviser with a branch office in Utah;

— (1)(a)(vii) the fee as specified in the Division's fee schedule.

— (1)(b) A certificate of license will not be issued.

— (2) License renewal requirements

— (2)(a) All licenses expire on December 31 of each year.

— (2)(b) To renew license, applicant must submit the following to the Division, with original signatures as applicable, before December 31:

— (2)(b)(i) Division Form 4-1 IAR, Application for Renewal of Investment Adviser License;

— (2)(b)(ii) the renewal fee specified in the Division's fee schedule;

— (2)(b)(iii) a copy of applicant's most recent SEC Form ADV - Uniform Application for Investment Adviser Registration;

— (2)(b)(iv) Division Form 4-5BIA, Indemnity Bond of Investment Adviser, if required by Section R164-4-5;

— (2)(b)(v) proof that applicant has passed the Series 65 or the Series 66 Exam, if applicant is renewing a license which was issued after April 23, 1990. The Division will consider applicant's request for waiver of this requirement if, prior to April 23, 1990, applicant was licensed as an investment adviser in another jurisdiction, with the Securities and Exchange Commission, or if applicant submits other evidence, satisfactory to the Division, of applicant's knowledge of the law pertaining to investment advisers and of applicant's competence to supervise investment adviser representatives.

— (3) License or application withdrawal requirements

— (3)(a) To withdraw a license or application, applicant must file with the Division, SEC Form ADV-W - Notice of Withdrawal from Registration as Investment Adviser.

— (3)(b) A withdrawal is effective thirty days following receipt of SEC Form ADV-W, unless the Division notifies applicant otherwise.](C) Investment adviser and investment adviser representative licensing requirements

(1) Investment adviser licensing requirements. To license as an investment adviser, applicant must submit to the Division the following:

(1)(a) SEC Form ADV - Uniform Application for Investment Adviser Registration, including applicant's audited balance sheet if required under item 14 of part II of Form ADV, with original signatures;

(1)(b) Division Form 4-5BIA - Indemnity Bond of Investment Adviser, if required by Section R164-4-5, or proof of membership in SIPC;

(1)(c) NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer for applicant's designated official;

(1)(d) proof that applicant's designated official has passed the Series 65 or the Series 66 Exam; and

(1)(e) a license fee as specified in the Division's fee schedule. (This fee includes the fee for one designated official.)

(2) Investment Adviser Representative Licensing Requirements. To license as an investment adviser representative, the investment adviser or federal covered adviser with which the applicant will associate must submit to the Division the following with original signatures as applicable:

(2)(a) NASD Form U-4;

(2)(b) proof applicant passed the Series 65 or the Series 66 Exam; and

(2)(c) a license fee as specified in the Division's fee schedule.

(3) Miscellaneous provisions

(3)(a) Except as provided in Subparagraph (C)(3)(b), applicant may associate with only one investment adviser or federal covered adviser at a time.

(3)(b) A dual license may be allowed by the director if:

(3)(b)(i) Applicant requests a dual license in writing to the Division which identifies the investment advisers or federal covered advisers with which applicant intends to associate and sets forth the reasons for the dual license;

(3)(b)(ii) Both investment advisers or federal covered advisers with which applicant intends to associate represent in writing to the Division that each assumes full responsibility for applicant at all times; and

(3)(b)(iii) Applicant discloses the dual license to each client.

[(D) Investment adviser representative licensing, renewal, and withdrawal requirements

— (1) Licensing requirements

— (1)(a) To license as an investment adviser representative, applicant must file the following with original signatures as applicable with the Division:

— (1)(a)(i) NASD Form U-4;

— (1)(a)(ii) proof applicant passed the Series 65 or the Series 66 Exam. The Division will consider applicant's request for waiver of this requirement if applicant:

— (1)(a)(ii)(aa) is a certified public accountant who has passed the Accredited Personal Financial Specialist examination (APFSE);

— (1)(a)(ii)(bb) has qualified for and received a designation as a Certified Financial Planner (CFP), Chartered Financial Consultant (ChFC), Chartered Financial Analyst (CFA), or similar designation, suitable to the Division, which evidences applicant's professional competence to provide investment advice or investment advisory services; or

— (1)(a)(ii)(cc) is licensed with a broker-dealer, has passed the Series 63, Uniform Securities Agent State Law Examination (Series 63 Exam) and either the Series 6, Investment Company Products/Variable Contracts Representative Examination, Series 6 Exam, or the Series 7, General Securities Representative Examination, Series 7 Exam, which are administered by the NASD; and the extent of applicant's investment advisory services is the referral of applicant's clients to a duly licensed investment adviser; and

— (1)(a)(iii) a fee as specified in the Division's fee schedule.

— (1)(b) A certificate of license will not be issued.

— (2) License renewal requirements

— (2)(a) All licenses expire on December 31 of each year.

— (2)(b) To renew license, applicant must:

— (2)(b)(i) provide proof that applicant has passed the Series 65 or the Series 66 Exam if applicant is renewing a license which was

issued after April 23, 1990. The Division will consider applicant's request for waiver of this requirement if applicant:

— (2)(b)(i)(aa) is a certified public accountant who has passed the APFSE;

— (2)(b)(i)(bb) has qualified for and received a designation as a CFP, ChFC, CFA, or similar designation, suitable to the Division, which evidences applicant's professional competence to provide investment advice or investment advisory services; or

— (2)(b)(i)(cc) is licensed with a broker-dealer, has passed the Series 63 Exam and either the Series 6 Exam or the Series 7 Exam, and the extent of applicant's investment advisory services is the referral of applicant's clients to a duly licensed investment adviser; and

— (2)(b)(ii) submit the renewal fee specified in the Division's fee schedule to the Division before December 31.

— (3) License or application withdrawal requirements

— (3)(a) To withdraw a license or application applicant must file a written request for withdrawal with the Division:

— (3)(b) a withdrawal is effective thirty days following receipt of applicant's written request for withdrawal, unless the Division notifies applicant otherwise.

— (4) Miscellaneous provisions

— (4)(a) Except as provided in subparagraph (D)(4)(b), applicant may associate with only one investment adviser at one time.

— (4)(b) A dual license may be allowed by the director if:

— (4)(b)(i) Applicant requests a dual license in a writing to the Division which identifies the investment advisers with which applicant intends to associate and sets forth the reasons for the dual license.

— (4)(b)(ii) Both investment advisers with which applicant intends to associate represent in writing to the Division that each assumes full responsibility for applicant at all times.

— (4)(b)(iii) Applicant discloses dual license to each client. (D) Investment adviser and associated investment adviser representative renewal requirements

(1) All licenses expire on December 31 of each year.

(2) To renew licenses of the investment adviser and associated investment adviser representatives, the investment adviser must submit the following to the Division before December 31:

(2)(a) Division Form 4-1 IAR, Application for Renewal of Investment Adviser License;

(2)(b) a copy of applicant's most recent SEC Form ADV - Uniform Application for Investment Adviser Registration;

(2)(c) a license fee for the investment adviser and a license fee for each associated investment adviser representative as specified in the Division's fee schedule (the license fee for the investment adviser includes the fee for one designated official);

(2)(d) Division Form 4-5BIA, Indemnity Bond of Investment Adviser, if required by Section R164-4-5;

(2)(e) the investment adviser's most recently audited balance sheet, if the investment adviser requires payment of advisory fees six months or more in advance and in excess of \$500 per client, or if the investment adviser has custody or possession of clients' funds or securities; and

(2)(f) a copy of the alternate disclosure brochure given or offered if the investment adviser delivered or offered to deliver a written disclosure statement in lieu of Part II of Form ADV during the last calendar year of the licensing period.

(E) Investment adviser representatives of federal covered advisers

(1) All licenses expire on December 31 of each year.

(2) To renew licenses of the investment adviser representatives of a federal covered adviser, the federal covered adviser must submit the following to the Division before December 31:

(2)(a) Division Form 4-1 FIAR, Application for Renewal of Investment Adviser Representative License; and

(2)(b) a license fee for each investment adviser representative as specified in the Division's fee schedule.

(F) Investment adviser and investment adviser representative withdrawal requirements

(1) Investment adviser withdrawal requirements

(1)(a) To withdraw a license or application, applicant must file with the Division, SEC Form ADV-W - Notice of Withdrawal from Registration as Investment Adviser.

(1)(b) A withdrawal is effective thirty days following receipt of SEC Form ADV-W, unless the Division notifies applicant otherwise.

(2) Investment adviser representative withdrawal requirements

(2)(a) To withdraw a license or application, applicant must file a written request for withdrawal with the Division.

(2)(b) A withdrawal is effective thirty days following receipt of applicant's written request for withdrawal, unless the Division notifies applicant otherwise.

(F)(G) Acts or practices which require licensing as an investment adviser and compliance with statutes and rules pertaining thereto

(1) Lawyers, accountants, engineers or teachers

(1)(a) A lawyer, accountant, engineer or teacher (professional) must be licensed as an investment adviser or investment adviser representative if the professional provides investment advice or investment advisory services to the professional's clients for a fee, if the advice is not "solely incidental" to the professional's regular professional practice with respect to clients.

(1)(b) For purposes of this subparagraph (1), providing investment advice under ANY of the following circumstances would NOT be considered to be "solely incidental":

(1)(b)(i) The investment advice the professional or the investment advisory service the professional renders clients is the primary professional advice for which the professional charges or is paid a fee;

(1)(b)(ii) The professional advertises or otherwise holds himself out to the public as a provider of investment advice; or

(1)(b)(iii) The professional holds funds for clients pursuant to discretionary authority to invest such funds.

(1)(c) Following are examples to assist in understanding the meaning of "solely incidental":

(1)(c)(i) If the primary professional advice for which the professional receives a fee involves business or tax planning and the professional neither advertises or otherwise holds himself out as a provider of investment advice, nor holds funds which the professional invests for clients. The professional may also provide investment advice to clients in connection with the planning or other professional services, without being required to become licensed as an investment adviser.

(1)(c)(ii) If the professional advertises or otherwise holds himself out as a provider of investment advice, the professional

must be licensed as an investment adviser whether or not the professional actually provides investment advice.

(1)(c)(iii) If the professional holds client funds which the professional invests for the client, the professional must be licensed as an investment adviser whether or not the professional actually provides investment advice.

(2) Broker-dealers and broker-dealer agents

(2)(a) A broker-dealer or broker-dealer agent must be licensed as an investment adviser or investment adviser representative if for a fee, the securities broker-dealer or sales agent of the securities broker-dealer provides investment advice to clients if the investment advice is not "solely incidental" to the conduct of business as a broker-dealer or broker-dealer agent.

(2)(b) For purposes of this subparagraph, providing investment advice under ANY of the following circumstances would NOT be considered "solely incidental":

(2)(b)(i) Providing investment advice to a client for a fee in addition to any commission received in connection with transactions in which the client either purchases or sells securities;

(2)(b)(ii) Providing investment advice, for a fee, to clients who are not clients of the broker-dealer with which the agent is licensed; or

(2)(b)(iii) Receiving compensation from an investment adviser to whom the broker-dealer or agent refers clients.

(3) Insurance agents

(3)(a) An insurance agent who, for a fee, provides investment advice to a client, must be licensed as an investment adviser or investment adviser representative.

(3)(b) An insurance agent who, performs an analysis of a client's estate, for a fee, which recommends that the client purchases or sells either specific securities or specific types of securities must be licensed as an investment adviser or investment adviser representative.

(3)(c) An insurance agent who, receives a commission from the sale of insurance to a client who makes such purchase with the proceeds of securities the insurance agent recommended be sold, must be licensed as an investment adviser or investment adviser representative.

(4) Others

(4)(a) One must be licensed as an investment adviser or investment adviser representative, as appropriate, whether or not described in subparagraphs (1), (2), or (3) of paragraph (E) if:

(4)(a)(i) Providing, advertising, or otherwise holding oneself out as a provider of investment advice;

(4)(a)(ii) Publishing a newspaper, news column, news letter, news magazine, or business or financial publication, which, for a fee, gives investment advice based upon the specific investment situations of the clients; or

(4)(a)(iii) Receiving a fee from an investment adviser for client referrals.

R164-4-3. General Licensing Requirements.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule applies to the licensing of broker-dealers, broker-dealer agents, issuer-agents, investment advisers, and investment adviser representatives.

(B) Definitions

(1) "CRD" means the Central Registration Depository.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "NASAA" means the North American Securities Administrators Association, Inc.

(4) "NASD" means the National Association of Securities Dealers.

(5) "SEC" means the United States Securities and Exchange Commission.

(6) "Termination" means the date on which the NASD processes NASD Form U-5 - Uniform Termination Notice for Securities Industry Registration.

(C) ~~Festing~~ Examination requirements

(1) A broker-dealer agent must pass the Series 63, Uniform Securities Agent State Law Examination (Series 63 Exam) or the Series 66, Uniform Combined State Law Examination (Series 66 Exam) ~~and any other examination required by the NASD in connection with a new application, which are administered by the NASD, if the broker-dealer agent's most recent license terminated two or more years before the date of receipt by the Division of a new application].~~ If the broker-dealer agent's most recent license terminated two or more years before the date of receipt by the Division of a new application, the agent will be required to retake the examination.

(2) An issuer-agent must pass the Series 63 Exam or the Series 66 Exam. ~~If the issuer-agent's most recent license terminated two or more years before the date of receipt by the Division of a new application, the agent will be required to retake the examination.~~

(3) ~~[An investment adviser or investment adviser representative must pass the Series 65, Uniform Investment Adviser Law Exam (Series 65 Exam) or the Series 66 Exam, which are administered by the NASD, if the investment adviser or investment adviser representative's most recent license terminated two or more years before the date of receipt by the Division of a new application.]~~ Investment advisers and investment adviser representatives

(3)(a) Examination requirements. An individual applying to be licensed as an investment adviser or investment adviser representative shall provide the Division with proof of obtaining a passing score on one of the following examinations:

(3)(a)(i) Series 65, Uniform Investment Adviser Law Examination (Series 65 Exam); or

(3)(a)(ii) Series 7, General Securities Representative Examination (Series 7 Exam) and Series 66 Exam.

(3)(b) Grandfathering

(3)(b)(i) Any individual who is licensed as an investment adviser or investment adviser representative in any jurisdiction in the United States on January 1, 2000 shall not be required to satisfy the examination requirements for continued licensure except that the Division may require additional examinations for any individual found to have violated state or federal securities law.

(3)(b)(ii) If an investment adviser or investment adviser representative has not been licensed in any jurisdiction for a period of two (2) years, the investment adviser or investment adviser representative will be required to retake the examination.

(3)(c) Waivers. The examination requirement shall not apply to an individual who currently holds one of the following professional designations:

(3)(c)(i) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;

(3)(c)(ii) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;

(3)(c)(iii) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

(3)(c)(iv) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;

(3)(c)(v) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or

(3)(c)(vi) Such other professional designation as the Division may recognize by order.

(D) Correcting amendments

~~[(1) A broker-dealer or broker-dealer agent must promptly file with the CRD, and not the Division, amendments to SEC Form BD - Uniform Application for Broker-Dealer Registration, or NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer, in accordance with the instructions on those forms.~~

~~—(2) An issuer-agent, investment adviser, or investment adviser representative must promptly file with the Division amendments to SEC Form ADV - Uniform Application for Investment Adviser Registration, NASD Form U-4 or any other information which materially changes the information on file with the Division.](1) At a time when a material change occurs:~~

(1)(a) a broker-dealer must promptly file amendments to SEC Form BD - Uniform Application for Broker-Dealer Registration with the CRD;

(1)(b) a broker-dealer agent must promptly file amendments to NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer with the CRD;

(1)(c) an issuer-agent must promptly file amendments to NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer with the Division;

(1)(d) an investment adviser must promptly file amendments to SEC Form ADV - Uniform Application for Investment Adviser Registration with the Division; and

(1)(e) an investment adviser representative must promptly file amendments to NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer with the Division.

(2) Amendments should be filed in accordance with the instructions on the respective forms.

(E) Designation of CRD

(1) The Division authorizes the CRD to receive filings on behalf of the Division whenever this rule requires filings to be submitted to the CRD.

(2) Documents filed with the CRD by licensees or applicants are deemed to be filed with the Division.

(3) The Division may request a copy of any document filed with the CRD. Failure to provide requested copies within a reasonable time after request may result in denial of the application.

(F) Service of process

(1) The requirement in Subsection 61-1-4(1) that requires filing a consent to service of process may be fulfilled by execution of SEC Form BD, NASD Form U-4, or SEC Form ADV, as applicable.

(G) License transfer

(1) A broker-dealer or broker-dealer agent may transfer a license by following CRD procedures. The Division recognizes and

participates in the NASAA/CRD Temporary Agent Transfer ("TAT") program and will honor transfers effected through TAT procedures.

R164-4-4. Minimum Financial Requirements and Financial Reporting Requirements of Licensed Broker-Dealers and Investment Advisers.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule provides the minimum financial requirements and financial reporting requirements for broker-dealers and investment advisers.

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "Net worth" means an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature; home, home furnishing, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(4) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-Dealer - Minimum Financial Requirements

(1) Each broker-dealer licensed or required to be licensed under the Act shall comply with SEC Rules 15c3-1 (17 CFR 240.15c3-1(1996)), 15c3-2 (17 CFR 240.15c3-2(1996)), and 15c3-3 (17 CFR 240.15c3-3(1996)), which are adopted and incorporated by reference.

(2) Each broker-dealer licensed or required to be licensed under the Act shall comply with SEC Rule 17a-11 (17 CFR 240.17a-11(1996)) and shall file with the Division upon request copies of notices and reports required under SEC Rules 17a-5 (17 CFR 240.17a-5(1996)), 17a-10 (17 CFR 240.17a-10(1996)), and 17a-11 (17 CFR 240.17a-11(1996)), which are adopted and incorporated by reference.

(3) To the extent the SEC promulgates changes to the above referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Division for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended SEC rule.

(D) Investment Adviser - Minimum Financial Requirements

(1) Except as provided in subparagraph (D)(4), unless an investment adviser posts a bond pursuant to Section R164-4-5, an investment adviser licensed or required to be licensed under the Act who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000, and every investment adviser licensed or required to be licensed under the Act who has discretionary authority over client funds or securities but does not

have custody of client funds or securities, shall maintain at all times a minimum net worth of \$10,000.

(2) An investment adviser registered or required to be registered who accepts prepayment of more than \$500 per client and six or more months in advance shall maintain at all times a positive net worth.

~~(2)~~(3) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser licensed or required to be licensed under the Act shall by the close of business on the next business day notify the Division if such investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the Division of its financial condition, including the following:

~~(2)~~(3)(a) A trial balance of all ledger accounts;

~~(2)~~(3)(b) A statement of all client funds or securities which are not segregated;

~~(2)~~(3)(c) A computation of the aggregate amount of client ledger debit balances; and

~~(2)~~(3)(d) A statement as to the number of client accounts.

~~(3)~~(4) The Division may require that a current appraisal be submitted in order to establish the worth of any asset.

~~(4)~~(5) Every investment adviser that has its principal place of business in a state other than this state shall maintain such minimum capital as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirements.

R164-4-5. Bonding Requirements for Broker-Dealers, Broker-Dealer Agents, Issuer-Agents, and Investment Advisers.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4 and 61-1-24.

(2) This rule sets the surety-bond requirements for broker-dealers, broker-dealer agents, issuer-agents, and investment advisers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "SEC" means the United States Securities and Exchange Commission.

(3) "SIPC" means the Securities Investor Protection Corporation.

(C) Bonding requirements for broker-dealers

(1) A broker-dealer who is a member of SIPC and is not excluded from membership assessments need not provide a bond.

(2) Every broker-dealer licensed or required to be licensed under this Act whose business is exclusively intrastate, who does not make use of any facility of a national securities exchange and who is not registered under section 15 of the Securities Exchange Act of 1934, shall be bonded in an amount of not less than \$100,000 by a bonding company qualified to do business in this state.

(D) Bonding requirements for broker-dealer agents

(1) A broker-dealer agent need not provide a bond.

(E) Bonding requirements for issuer-agents

(1) An issuer-agent need not provide a bond unless otherwise required by Section R164-11-1.

(2) If an issuer-agent must provide a bond, it must be:

(2)(a) issued by a corporate bonding company qualified to do business in Utah;

(2)(b) on or in substantially the same form as Division Form 4-5BI, "Corporate Indemnity Bond of Issuer"; and

(2)(c) be in the amount of \$25,000.

(3) Upon written request the Division may waive the bond requirement and accept instead the escrow of funds.

(3)(a) The issuer or issuer-agent must place in escrow at least \$25,000.

(3)(b) The issuer or issuer-agent may place the money in escrow at any federal or state bank or savings institution, only.

(3)(c) The term of the escrow must extend for a period terminating no earlier than four years after expiration of the issuer's registration statement.

(3)(d) The escrow must be on or in substantially the same form as Division Form 4-5EIA, "Escrow Agreement", which is available from the Division.

(3)(e) The funds in escrow may be released only by an order of the Division, in accordance with the following:

(3)(e)(i) If claims have been made against the issuer-agent in a court of competent jurisdiction and the court has finally adjudicated the dispute, or the claimant and the issuer-agent have agreed in writing to resolve the dispute, the amount of funds at issue may be ordered released by the Division in accordance with the order or agreement, up to the amount placed in escrow; or

(3)(e)(ii) The issuer's registration statement expired not less than four (4) years ago.

(F) Bonding requirements for certain investment advisers

(1) Except as provided in subparagraphs (F)(2) and (3), every investment adviser having custody of or discretionary authority over client funds or securities shall be bonded:

(1)(a) in an amount determined by the Division based upon the number of clients and the total assets under management of the investment adviser, which shall be at a minimum of \$10,000;

(1)(b) issued by a bonding company qualified to do business in this state;

(1)(c) on or in substantially the same form as Division Form 4-5BIA, Corporate Indemnity Bond of Investment Adviser.

(2) The requirements of subparagraph (F)(1) shall not apply to those applicants or licensees who comply with the requirements of Section R164-4-4.

(3) An investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of subparagraph (F)(1), provided that the investment adviser is licensed as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding.

(4) Upon request and for good cause shown, the Division may waive the bond requirement and accept instead the escrow of funds.

(4)(a) The investment adviser must place in escrow an amount determined by the Division based upon the number of clients and the total assets under management of the investment adviser, which shall be at a minimum of \$10,000.

(4)(b) The investment adviser may place the money in escrow at any federal or state bank or savings institution, only.

(4)(c) The term of the escrow must extend for a period terminating no earlier than three years after expiration of the investment adviser's license.

(4)(d) The escrow must be on, or in substantially the same form as, Division Form 4-5EIA, Escrow Agreement.

(4)(e) The funds in escrow may be released only by an order of the Division, in accordance with the following:

(4)(e)(i) Where claims have been made against the investment adviser in a court of competent jurisdiction and the court has finally adjudicated the dispute, or the claimant and the investment adviser have agreed in writing to resolve the dispute, the amount of funds at issue may be ordered released by the division in accordance with the order or agreement, up to the amount placed in escrow; or

(4)(e)(ii) The investment adviser has not been licensed by the Division for a period of at least four years.

R164-4-6. Notice Filing Requirements for Federal Covered Advisers.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4 and 61-1-24.

(2) This rule provides the notice filing requirements for federal covered advisers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "SEC" means the United States Securities and Exchange Commission.

(C) Notice Filings

Federal covered advisers required to file notice filings pursuant to Subsection 61-1-4(2), must file with the Division or the CRD the following with original signatures as applicable:

(1) an executed SEC Form ADV - Uniform Application for Investment Adviser Registration; and

(2) a filing fee as specified in the Division's fee schedule.

(D) Notice filing renewals

(1) All notice filings expire on December 31 of each year.

(2) To renew notice filings, a federal covered adviser must submit the following to the Division or the CRD, with original signatures as applicable, before December 31:

(2)(a) a copy of the federal covered adviser's most recent SEC Form ADV; and

(2)(b) a filing fee as specified in the Division's fee schedule.

R164-4-7. Broker-dealers, Investment Advisers and Other Securities Personnel Using the Internet for General Dissemination of Information on Products and Services.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-13 and 61-1-24.

(2) This rule clarifies when broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives are transacting business in this state for purposes of Section 61-1-4 by distributing information on available products and services through Internet Communications available to persons in this state.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Internet" means the global information system comprised of independent computer networks which are interconnected and share information without the use of a central processing center by

use of the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, to include without limitation, the World Wide Web, proprietary or "common carrier" electronic delivery systems, or similar medium.

(3) "Internet Communications" means a communication made on the Internet which is directed generally to anyone who has access to the Internet, including persons in Utah, to include without limitation, postings on Bulletin Boards, displays on "Home Pages" or similar methods.

(C) Licensing Exclusion

Broker-dealers, investment advisers, broker-dealer agents ("BD agents") and investment adviser representatives ("IA reps") who use the Internet to distribute information on available products and services through Internet Communications shall not be deemed to be "transacting business" in this state for purposes of Subsections 61-1-3(1) and 61-1-3(3) based solely on that fact if the following conditions are observed:

(1) The Internet Communication contains a legend in which it is clearly stated that:

(1)(a) the broker-dealer, investment adviser, BD agent or IA rep in question may only transact business in this state if first licensed, excluded or exempted from state broker-dealer, investment adviser, BD agent or IA rep licensing requirements, as may be; and

(1)(b) follow-up, individualized responses to persons in this state by such broker-dealer, investment adviser, BD agent or IA rep that involve either the effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, will not be made absent compliance with state broker-dealer, investment adviser, BD agent or IA rep licensing requirements, or an applicable exemption or exclusion;

(2) The Internet Communication contains a mechanism, including and without limitation, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this state, said broker-dealer, investment adviser, BD agent or IA rep is first licensed in this state or qualifies for an exemption or exclusion from such requirement. Nothing in this subparagraph shall be construed to relieve a state licensed broker-dealer, investment adviser, BD agent or IA rep from any applicable securities registration requirement in this state;

(3) The Internet Communication does not involve either effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, in this state over the Internet, but is limited to the dissemination of general information on products and services; and

(4) In the case of a BD agent or IA rep:

(4)(a) the affiliation with the broker-dealer or investment adviser of the BD agent or IA rep is prominently disclosed within the Internet Communication;

(4)(b) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated retains responsibility for reviewing and approving the content of any Internet Communication by a BD agent or IA rep;

(4)(c) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated first authorizes the distribution of information on the particular products and services through the Internet Communication; and

(4)(d) in disseminating information through the Internet Communication, the BD agent or IA rep acts within the scope of the authority granted by the broker-dealer or investment adviser.

(D) Limitations of Exclusion

(1) The exclusion provided in paragraph (C) extends to state broker-dealer, investment adviser, BD agent and IA rep licensing requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions.

(2) Nothing in this exclusion shall be construed to affect the activities of any broker-dealer, investment adviser, BD agent and IA rep engaged in business in this state that is not subject to the jurisdiction of the Division as a result of the National Securities Markets Improvements Act of 1996, as amended.

R164-4-8. Exclusion for Certain Canadian Brokers and Securities Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsections 61-1-13(3)(i) and 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exclusion from the definition of "Broker-dealer" for certain Canadian brokers and provides an exemption for transactions effectuated by these certain Canadian brokers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Broker-Dealer Exclusion

"Broker-dealer" as defined in Section 61-1-13(3) excludes a person who is resident in Canada, has no office or other physical presence in this state, and complies with the following conditions:

(1) Only effects or attempts to effect transactions in securities:

(1)(a) with or through the issuers of the securities involved in the transactions, broker-dealers, banks, saving institutions, trust companies, insurance companies, investment companies defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

(1)(b) with or for a person from Canada who is temporarily present in this state, with whom the Canadian person had a bona fide business-client relationship before the person entered this state; or

(1)(c) with or for a person from Canada who is in this state, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor;

(2) files a notice in the form of his current application required by the jurisdiction in which their head office is located and a consent to service of process;

(3) is a member of a self-regulatory organization or stock exchange in Canada;

(4) Maintains his provincial or territorial registration and his membership in a self-regulatory organization or stock exchange in good standing;

(5) Discloses to his clients in this state that he is not subject to the full regulatory requirements of the Utah Uniform Securities Act; and

(6) Is not in violation of Section 61-1-1 and all rules promulgated thereunder.

(D) Transactional Securities Exemption

The Division finds that registration is not necessary or appropriate for the protection of investors in connection with an offer or sale of a security in a transaction effected by a person excluded from the definition of broker-dealer under Paragraph (C)

KEY: securities, securities regulation

~~[March 4, 1998]~~2000

Notice of Continuation December 29, 1997

61-1-3

61-1-4

61-1-5

61-1-6

61-1-13

61-1-14

61-1-24

Commerce, Securities
R164-14
Exemptions

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 22644

FILED: 02/01/2000, 15:34

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To provide an exemption from registration and corresponding exception from agent licensing for any transaction involving: 1) a reorganization if the issuer is listed on a national securities exchange, and 2) securities issued as part of an employee compensation plan.

SUMMARY OF THE RULE OR CHANGE: This rule will provide two additional exemptions from registration. First, an exemption will be provided for transactions involving mergers, consolidations, or reorganizations where the issuer is a covered security by virtue of Section 18(b)(1) of the Securities Act of 1933. While these issuers are not currently required to register because of federal preemption, this exemption will enable their agents that meet the requirements of Subsection 61-1-13(2) to effect the transaction without obtaining licensure. Second, an exemption will be provided for transactions involving the issuance of securities as part of an employee compensatory plan. There is currently a federal exemption, SEC (United States Securities and Exchange Commission) Rule 701, which is being adopted and incorporated by reference. Both exemptions are self-executing.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-1-24, and Subsection 61-1-14(2)(s)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Securities Act of 1933, Section 18(b)(1) (see 15 U.S.C. 77r(b)(1)); SEC Rule 701 (see 17 CFR 230.701 (1999))

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This rule change will cost the state \$3,000 in lost revenue (50 filings per year at \$60 per filing).
- ❖ LOCAL GOVERNMENTS: This rule change will not affect local government because local government is not involved in securities regulation.
- ❖ OTHER PERSONS: This rule change will save other persons \$260 per filing. This savings will accrue to persons relying on the exemption because they will no longer need to file with the division. This is calculated assuming that they will save, per filing, \$60 in filing fees and \$200 in costs to prepare and send a filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs for affected person because the exemptions are benefits which are self-executing and require no filing with the division.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of this rule is to provide exemptions from registration requirements in certain instances. It will enable the agents of issuers of a covered security (issuers are already exempt from registration) to effect certain transactions without being licensed. A second exemption provided by this rule will adopt by reference a federal exemption for transactions involving the issuance of securities as part of an employee compensation plan. The adoption of this rule will impact the state budget for approximately \$3,000 a year, representing a loss of revenue from 50 filings per year at \$60 per filing. There will be no impact on local governments. The division estimates that the proposed rule will impact upon the regulated professionals through a savings of \$260 for each use of the proposed exemption.

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

Commerce
Securities
Second Floor, Heber M. Wells Building
160 East 300 South
PO Box 146760
Salt Lake City, UT 84114-6760, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

S. Anthony Taggart at the above address, by phone at (801) 530-6600, by FAX at (801) 530-6980, or by Internet E-mail at taggart@br.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/16/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2000

AUTHORIZED BY: S. Anthony Taggart, Director

R164. Commerce, Securities.

R164-14. Exemptions.

R164-14-26s. Reorganization Exemption for Transactions Involving Certain Federal Covered Securities.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exemption for any transaction involving a reorganization where the securities issued in the transaction are, or will be upon completion of the transaction, covered securities pursuant to section 18(b)(1) of the Securities Act of 1933.

(3) While the Division is preempted by federal law from requiring registration of a covered security, there is no such preemption of licensing requirements for issuer agents which offer or sell covered securities.

(4) By providing this exemption, issuers that participate in a reorganization whose securities are, or will be upon completion of the transaction, covered securities pursuant to Section 18(b)(1) of the Securities Act of 1933, will not be required to license agents which meet the exclusion requirements of Subsection 61-1-13(2).

(5) This exemption is self-executing and requires no filing with the Division.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Exemption

The Division finds that registration is not necessary or appropriate for the protection of investors in connection with any transaction or series of transactions involving a merger, consolidation, reorganization, recapitalization, reclassification, or sale of assets where the securities issued in connection with the transaction are, or will be upon completion of the transaction, covered securities pursuant to Section 18(b)(1) of the Securities Act of 1933.

R164-14-27s. Compensatory Benefit Plan Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exemption from the registration requirements of Section 61-1-7 for securities issued in compensatory circumstances. The exemption is not available for plans or schemes to circumvent this purpose, such as to raise capital. This exemption also is not available for any transaction that is in technical compliance with this rule but is part of a plan or scheme to evade the registration provisions of Section 61-1-7. In any of these cases, registration under the Act is required unless another exemption is available.

(3) Nothing in this rule is intended to be or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to employees or other persons within the scope of the rule adequate to satisfy the antifraud provisions of Section 61-1-1.

(4) Attempted compliance with the rule does not act as an exclusive election. The issuer can also claim the availability of any other applicable exemption.

(5) This exemption is self-executing and requires no filing with the Division.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Compensatory Benefit Plan Exemption

(1) Offers and sales made in compliance with SEC Rule 701, Exemption for Offers and Sales of Securities Pursuant to Certain Compensatory Benefit Plans and Contracts Relating to Compensation, 17 CFR 230.701 (1999), which is adopted and incorporated by reference and available from the Division, are determined to be exempt from the registration requirements of Section 61-1-7.

(D) Resale limitations

The resale of securities issued pursuant to this rule must be in compliance with the registration requirements of Section 61-1-7 or an exemption therefrom.

(E) Disqualification

(1) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

(1)(a) within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

(1)(b) within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;

(1)(c) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(1)(d) is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(2) Subparagraph (E)(1) shall not apply if:

(2)(a) the party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party;

(2)(b) before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

(2)(c) the issuer establishes that it did not know and in the exercise of reasonable care could not have known that a disqualification existed under Paragraph (E).

KEY: securities, securities regulation

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**Health, Health Systems Improvement,
Primary Care and Rural Health
R434-20
Special Population Health Care
Provider Financial Assistance Program**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 22622

FILED: 01/26/2000, 07:55

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is required by Title 26, Chapter 9e. The statute gives the responsibility to the committee to "make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to implement the provisions of this chapter," as per Subsection 26-9e-5(2)(f). The committee has asked that changes be made to the rule related to examinations and tests required to become licensed in the state of Utah as a dentist, and location of accredited school of allopathic or osteopathic medicine for physicians. Grant and scholarship recipients include dentists, mental health therapists, physicians, and physician assistants.

SUMMARY OF THE RULE OR CHANGE: The one-year residency requirement for dentists is deleted. Dentist examination and test requirements for licensure in the state of Utah have been rewritten for clarity. Reference to schooling exclusively in the United States or Canada is deleted to remove discriminatory language. The eligibility and selection requirements are changed to clarify and require that a health care provider must be willing to accept Children's Health Insurance Program patients.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 9e

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: A cost to the Utah Department of Health to print and distribute the new rules to health care providers and medically underserved urban sites throughout the state. Funding is provided in the statute to cover

administrative costs of this program and rule. Changes in this rule do not require an increased workload to the department. This rule change imposes no new requirements on the state budget.

❖LOCAL GOVERNMENTS: Changes in this rule do not require an increased workload or cost to local governments. This rule change imposes no new requirements on local governments; therefore, no cost or savings.

❖OTHER PERSONS: Changes to this rule do not require an increased workload or cost to other persons. There is an anticipated savings to medically underserved urban sites who opt to participate in this program, and a positive long-term impact is expected due to retention of health care providers at those participating medically underserved urban sites. Normal costs for recruiting and retaining health care providers should remain the same, or lessen, with time. This rule change imposes no new requirements on other persons. Actual dollar savings are difficult to quantify due to the many future variables that might opt to take advantage of this program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with affected persons. This rule change imposes no new requirements on the state budget, local governments, or other persons. There is an anticipated savings to medically underserved urban sites who opt to participate in this program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule appropriately reduces the regulatory burden for providers that wish to participate in this grant program, without sacrificing protection for the state and other interested parties--Rod L. Betit

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

Health
Health Systems Improvement,
Primary Care and Rural Health
Cannon Health Building
288 North 1460 West
PO Box 142005
Salt Lake City, UT 84114-2005, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Marilyn Haynes-Brokopp at the above address, by phone at (801) 538-6113, by FAX at (801) 538-6387, or by Internet E-mail at mbrokopp@doh.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/16/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2000

AUTHORIZED BY: Rod L. Betit, Executive Director

R434. Health, Health Systems Improvement, Primary Care and Rural Health.

R434-20. Special Population Health Care Provider Financial Assistance Program.

R434-20-1. Purpose.

This rule provides criteria for the implementation of the Special Population Health Care Provider Financial Assistance and Retention Act; the award of grant funds to primary health care providers to repay loans taken for educational expenses; and the award of scholarship funds to individuals seeking to become primary health care providers, in exchange for practicing for a specified period of time in a medically underserved urban area of the state.

R434-20-2. Definitions.

The definitions as they appear in Section 26-9e-2 apply. In addition:

(1) "Applicant" means a person who submits a completed application for a grant or scholarship under this part.

(2) "Approved site" means an eligible site which is approved by the committee pursuant to Subsection 26-9e-2(15).

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

(4) "Eligible site" means a site that the committee has designated as meeting the eligibility criteria established by the committee and is in a medically underserved urban area pursuant to Subsections 26-9e-5 (1)(f) and 26-9e-2(15).

(5) "Grant" means loan repayment as defined in Subsection 26-9e-2(6).

(6) "Postgraduate training" means internship, practicum, preceptorship, or residency training required for primary health care provider licensure and as required by this rule.

(7) "Scholarship" means an award of money for educational expenses given to an individual under a contract where the individual agrees to become a primary health care provider in exchange for practicing for a specified period of time in a medically underserved urban area in the state.

R434-20-3. Grant Administration.

(1) The department may provide a grant to repay loans taken for primary health care provider educational expenses.

(2) The grant recipient may not enter into any other similar contracts until he satisfies the service obligation described in the grant.

(3) For a grant recipient with a four year contract, the state shall provide 20% of the grant at the completion of the first three months, 20% of the grant at the completion of year one, 20% at the completion of year two, 20% at the completion of year three, and 20% at the completion of year four.

(4) For a grant recipient with a three year contract, the state shall provide 25% of the grant at the completion of the first three months, 25% of the grant at the completion of year one, 25% at the completion of year two, and 25% at the completion of year three.

(5) For a grant recipient with a two year contract, the state shall provide 33% of the grant at the completion of the first three months, 33% of the grant at the completion of year one, and 34% at the completion of year two.

(6) A grant recipient must have a permanent, unrestricted license to practice in their primary health care specialty in Utah before his first day of practice under the grant contract.

(7) A grant recipient must obtain approval from the committee, of the eligible site to complete his service obligation, prior to beginning to fulfill his service obligation at an eligible site.

(8) A grant recipient must obtain approval prior to changing the approved site where he fulfills his service obligation.

R434-20-4. Full-Time Equivalency Provisions for Grant Recipients.

(1) The annual grant amount is based on the level of full-time equivalency that the grant recipient agrees to work.

(2) A grant recipient who provides services for at least 40 hours per week may be awarded a grant based on the percentages outlined in Section R434-20-3.

(3) A grant recipient who provides services for less than 40 hours per week may be awarded a proportionately lower grant based on a full-time equivalency of 40 hours per week.

R434-20-5. Grant Eligibility and Selection.

(1) In selecting a grant recipient for a grant award, the committee shall evaluate the applicant based on the following selection criteria:

(a) the extent to which an applicant's training in a primary health care specialty needed at an eligible site;

(b) the applicant's commitment to serve in a medically underserved urban area which can be demonstrated in any of the following ways:

(i) has worked or volunteered at a community or migrant health center, homeless shelter, public health department clinic, or other service commitment to the underserved;

(ii) has work or educational experience with special populations through the Peace Corps, VISTA, or a similar volunteer agency;

(iii) has cultural or language skills that may be essential for provision of primary health care services to special populations;

(iv) other facts or experience that the applicant can demonstrate to the committee that establishes his commitment to serve special populations;

(c) the availability of the applicant to begin service, with greater consideration being given to applicants available for service at earlier dates;

(d) the length of the applicant's proposed service obligation, with greater consideration given to applicants who agree to serve for longer periods of time;

(e) the applicant's:

(i) academic standing;

(ii) prior professional or personal experience serving special populations,

(iii) board certification or eligibility;

(iv) postgraduate training achievements;

(v) peer recommendations;

(vi) other facts that the applicant can demonstrate to the committee that establishes his professional competence or conduct;

(f) the applicant's financial need;

(g) the applicant's willingness to accept Medicaid, Medicare, ~~or~~ Utah Medical Assistance, and Children's Health Insurance Program patients;

(h) the applicant's willingness to provide care regardless of a patient's ability to pay;

(i) the applicant's ability and willingness to provide care;

(j) the applicant's achieving an early match with an eligible site.

(2) To be eligible for a grant, an applicant must be a United States citizen or permanent resident.

(3) To be eligible for a grant, an applicant must be enrolled in or have completed postgraduate training prior to submitting an application to participate in the grant program.

(4) Only grant applicants who are available to begin practicing as a primary health care provider in the state within one year from the date of application are eligible for this program.

R434-20-6. Dentist Grant Eligibility and Selection.

(1) In selecting a Dentist grant recipient for a grant award, the committee shall evaluate the applicant based on the selection criteria listed in Section R434-20-5.

(2) In selecting a Dentist grant recipient for a grant award, the committee shall also evaluate the Dentist applicant based on the following selection criteria:

(a) must have attended a dental school ~~in the United States or Canada~~ accredited by the American Dental Association.

(b) must have passed the Utah Dentist and Dental Hygienist Law Examination, pursuant to Subsection R156-69-302b(1).

(c) must have passed the Western Regional Examining Board, ~~pursuant to Subsection R156-69-302b(2)(a);~~ ~~;~~

~~—(c) must have passed the~~ Central Regional Dental Testing Service, Inc.; ~~or~~ Northeast Regional Board of Dental Examiners, Inc.; ~~or~~ Southern Regional Testing Agency, Inc., examinations ~~;~~ pursuant to Subsection R156-69-302b(2)(b); ~~;~~

~~—(d) must have passed the Utah Dentist and Dental Hygienist Law Examination, pursuant to Subsection R156-69-302b(1);~~

R434-20-7. Mental Health Therapist Grant Eligibility and Selection.

(1) In selecting a Mental Health Therapist grant recipient for a grant award, the committee shall evaluate the applicant based on the selection criteria listed in Section R434-20-5.

(2) In selecting a clinical psychologist grant recipient for a grant award, the committee shall also evaluate the clinical psychologist applicant based on the following selection criteria:

(a) must have attended a school ~~in the United States or Canada~~ accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education" and recognized by the Association of State and Provincial Psychology Boards as listed in the "Doctoral Psychology Programs Meeting Designation Criteria", pursuant to Subsection R156-61-302a(1), awarding a degree that meets the requirements of Subsection 58-61-304(1)(d).

(b) must be completing or have completed a minimum two year supervised clinical internship prior to submitting an application to participate in the grant program.

(c) must have passed the Examination for the Professional Practice of Psychology developed by the American Association of State Psychology Board, pursuant to Subsection R156-61-302c(1)(a).

(d) must have passed the Utah Psychology Law Examination, pursuant to Subsection R156-61-302c(1)(b).

(3) In selecting a clinical social worker grant recipient for a grant award, the committee shall also evaluate the clinical social worker applicant based on the following selection criteria:

(a) must have attended a school~~[-in the United States or Canada]~~ accredited by the United States Council on Social Work Education or the Canadian Association of Schools of Social Work, awarding a degree in social work.

(b) must be completing or have completed a minimum 4,000 hours of supervised clinical social work and mental health therapy training which includes 1,000 hours of face to face therapy completed over a duration of not less than two years, prior to submitting an application to participate in the grant program.

(c) must have passed the Utah Social Work Law, Rules, and Ethics Examination, pursuant to Subsection R156-60a-302d(1)(a).

(d) must have passed the National Basic Examination of the American Association of State Social Work Boards, pursuant to Subsection R156-60a-302d(2)(b).

(e) must have passed the National Clinical Examination of the American Association of State Social Work Boards or the Clinical Social Workers Examination of the State of California, pursuant to Subsection R156-60a-302d(1)(b).

(4) In selecting a marriage and family therapist grant recipient for a grant award, the committee shall also evaluate the marriage and family therapist applicant based on the following selection criteria:

(a) must have attended a school~~[-in the United States or Canada]~~ accredited by or in a candidacy status by the Commission on Accreditation for Marriage and Family Therapy Education, awarding a degree in marriage and family therapy.

(b) must be completing or have completed 4,000 hours of marriage and family therapy training and 1,000 hours supervised mental health therapy training completed over a duration of not less than one year, prior to submitting an application to participate in the grant program.

(c) must have passed the Utah Marriage and Family Therapy Law and Ethics Examination and the Examination of Marital and Family Therapy written for the Association of Marital and Family Therapy Regulatory Boards, pursuant to Subsection R156-60b-302d(1).

(5) In selecting a professional counselor grant recipient for a grant award, the committee shall also evaluate the professional counselor applicant based on the following selection criteria:

(a) must have attended a school~~[-in the United States or Canada]~~ accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education", for the Commission of Recognition of Postsecondary Accreditation of the American Council on Education, awarding a degree that meets the requirements of Subsection 58-60-405(4).

(b) must be completing or have completed 4,000 hours of supervised professional counselor training and 1,000 hours of supervised training in mental health therapy completed over a duration of not less than one year, prior to submitting an application to participate in the grant program.

(c) must have passed the Utah Professional Counselor Law, Rules, and Ethics Examination, pursuant to Subsection R156-60c-302d(1)(a).

(d) must have passed the National Counseling Examination of the National Board of Certified Counselors, pursuant to Subsection R156-60c-302d(1)(b).

(e) must have passed the National Clinical Mental Health Counseling Examination of the National Board of Certified Counselors, pursuant to Subsection R156-60c-302d(1)(c).

R434-20-8. Physician Grant Eligibility and Selection.

(1) In selecting a Physician grant recipient for a grant award, the committee shall evaluate the applicant based on the selection criteria listed in Section R434-20-5.

(2) In selecting a Physician grant recipient for a grant award, the committee shall also evaluate the Physician applicant based on the following selection criteria:

(a) must have attended an accredited school of allopathic or osteopathic medicine, accredited by the Liaison Committee on American Medical Education or by the American Osteopathic Association Bureau of Professional Education, which awards a degree of Doctor of Medicine or Doctor of Osteopathy.

(b) must be enrolled in or have completed a minimum three year postgraduate training program in the United States or Canada accredited by the Accreditation Committee on Graduate Medical Education or the American Osteopathic Association Bureau of Professional Education or accredited by the Royal College of Physicians and Surgeons of Canada, prior to submitting an application to participate in the grant program.

(c) must have passed the examination requirements for licensure as a physician or surgeon or osteopathic physician or surgeon in Utah, pursuant to Section R156-67-302d or Section R156-68-302b.

R434-20-9. Physician Assistant Grant Eligibility and Selection.

(1) In selecting a Physician Assistant grant recipient for a grant award, the committee shall evaluate the applicant based on the selection criteria listed in Section R434-20-5.

(2) In selecting a Physician Assistant grant recipient for a grant award, the committee shall also evaluate the Physician Assistant applicant based on the following selection criteria:

(a) must be enrolled in or completing a physician assistant program accredited by the Commission on Accreditation of Allied Health Education Programs.

(b) must have passed the National Commission on the Certification of Physician Assistants/National Board of Medical Examiners Physician Assistant National Certification Exam, pursuant to Section R156-70a-302(1).

(c) must have passed the Utah Physicians Assistant Law and Rules Examination, pursuant to Section R156-70a-302(2).

(d) must have a permanent, unrestricted license to practice medicine as a physician assistant in Utah.

(e) must submit a copy of the delegation of services agreement signed by the supervising physician and substitute supervising physician for approval by the committee.

(3) The department may not provide a grant to a physician assistant until the physician assistant passes the National Commission on the Certification of Physician Assistants/National Board of Medical Examiners Physician Assistant National Certification Exam.

R434-20-10. Eligible Bona Fide Loans.

(1) A bona fide loan may include the following:

(a) a commercial loan made by a bank, credit union, savings and loan association, insurance company, school, or credit institution;

(b) a governmental loan made by a federal, state, county, or city agency;

(c) a loan made by another person which is documented by a contract notarized at the time of the making of the loan; indicative of an arm's length transaction, and with competitive term and rate as other loans available to primary health care provider students.

(d) a loan that the applicant conclusively demonstrates is a bona fide loan.

R434-20-11. Extension of Grant Contract.

(1) A grant recipient who has signed a grant contract for less than four years may apply on or after his first day of practice under a grant to extend his grant contract by one or two years, up to a maximum of four years total.

(2) The grant contract may be extended only at an approved site.

(3) A grant recipient who desires to extend his grant contract must inform the committee in writing of his interest in extending his grant contract at least six months prior to the termination of his unextended grant contract.

R434-20-12. Schedule of Breach of Grant Contract Repayment.

(1) A grant recipient who fails to complete the service obligation shall begin to repay the penalty to the department within 30 days of the breach. The department may submit for immediate collection all amounts due from a breaching grant recipient who does not begin to repay within 30 days.

(2) The amount to be paid back shall be determined from the end of the month in which the grant recipient breached the contract as if the grant recipient had breached at the end of the month.

(3) The breaching grant recipient shall pay the total amount due within one year of breaching the contract. The scheduled payback may not be less than four equal quarterly payments.

R434-20-13. Scholarship Administration.

(1) The department may provide scholarship funds to a scholarship recipient for a maximum of four years of postgraduate schooling or until completion of postgraduate schooling, whichever is shorter.

(2) For each academic year the committee may award \$12,000 to a scholarship recipient.

(3) The committee may pay tuition and fees directly to the school and determine the amount and frequency of direct payments to the student.

(4) The scholarship recipient may not enter into a scholarship contract other than with the program established in Section 26-9e-1 until the service obligation agreed upon in the state scholarship contract is satisfied.

(5) A scholarship recipient must work full-time, as defined by the scholarship recipient's employer and as specified in his contract with the department.

(6) A scholarship recipient must serve one year of service obligation for each year he received a scholarship under this program.

(7) The committee may cancel a scholarship at any time if it finds that the scholarship recipient has voluntarily or involuntarily

terminated his schooling, postgraduate training, or if it appears to be a reasonable certainty that the scholarship recipient does not intend to practice as required by statute, rules, and contract in a medically underserved urban area in the state.

(8) Upon completion of schooling and required postgraduate training, the scholarship recipient is responsible to find employment at an eligible site in a medically underserved urban area of Utah.

(9) A scholarship recipient must obtain approval from the committee prior to beginning service obligation at an eligible site.

(10) A scholarship recipient must obtain approval from the committee prior to changing the approved site where he fulfills his service obligation.

(11) A dental, medical, mental health therapist, and osteopathic scholarship recipient must:

(a) begin required postgraduate training within six months after he obtains his degree. Postgraduate training must be continuous unless the scholarship recipient obtains prior approval from the director of the scholarship recipient's training program and from the committee.

(b) obtain an unrestricted license to practice in the state and begin practicing for the agreed upon period of time at an approved site within six months of completion of postgraduate training.

(12) Medical and Osteopathic scholarship recipients shall:

(a) select for postgraduate training a residency in one of the following areas: family practice, general internal medicine, general pediatrics, or obstetrics/gynecology. If the scholarship recipient desires to choose a postgraduate training program in a medical specialty other than family practice, general internal medicine, general pediatrics, or obstetrics/gynecology, he must demonstrate the need for the medical specialty in a medically underserved urban area and obtain approval from the committee.

(b) attend a minimum three-year postgraduate training program.

(13) Physician assistant scholarship recipients:

(a) must obtain a temporary physician assistant license and begin practicing medicine at an eligible site for the agreed upon period of time within six months of completion of physician assistant education.

(b) must submit a copy of the delegation of services agreement signed by the supervising physician and substitute supervising physician for approval by the committee.

(c) shall take the National Commission on the Certification of Physician Assistants/National Board of Medical Examiners Physician Assistant National Certification Exam the first time it is offered after completion of physician assistant schooling. After the physician assistant scholarship recipient passes this exam he shall obtain a permanent, unrestricted license as a physician assistant as soon as possible.

(d) if the physician assistant scholarship recipient fails the National Commission on the Certification of Physician Assistants/National Board of Medical Examiners Physician Assistant National Certification Exam, he must retake the exam within one year of failure of the National Certification Exam. If the physician assistant scholarship recipient fails the exam a second time, or fails to retake the exam, he shall be in default of the scholarship contract. The period when the temporary license is lost due to failing the exam and the physician assistant scholarship recipient is unable to practice at an approved site, does not count against retiring the service obligation under the contract.

R434-20-14. Scholarship Applicant Eligibility and Selection.

(1) In selecting a recipient for a scholarship, the committee shall evaluate the applicant based on the following selection criteria:

(a) the applicant's commitment to serve in a medically underserved urban area, which may be demonstrated in any of the following ways:

(i) has worked or volunteered to serve special populations or other service commitment to the underserved;

(ii) has work or educational experience with special populations through the Peace Corps, VISTA, or a similar volunteer agency;

(iii) has cultural or language skills that may be essential for provision of primary health care services to special populations;

(iv) has declared a commitment to practice in a medically underserved urban area as expressed in the essay which is required as part of the scholarship application;

(v) other facts or experience that the applicant can demonstrate to the committee that establishes his commitment to special populations.

(b) the applicant's need for assistance in financing his education;

(c) the applicant's academic ability as demonstrated by official transcripts and official school admission test scores;

(d) the applicant's evidence that he has been accepted by or currently attends an accredited school approved by the committee;

(e) the applicant's personal and professional references demonstrating the applicant's good character and potential to successfully complete school.

(2) In selecting a scholarship recipient, the committee may give preference to:

(a) applicants who agree to serve in a medically underserved urban area of the state for a greater length of time in return for scholarship assistance;

(b) physician applicants who agree to complete their postgraduate training in one of the following specialties: family practice, general internal medicine, general pediatrics, obstetrics/gynecology, or psychiatry.

(3) To be eligible to receive a scholarship, an applicant must be a United States citizen or permanent resident.

(4) Before the committee awards a scholarship, applicants must participate in an interview with the committee or its designee.

(5) To remain eligible to receive scholarship funds, an scholarship recipient must satisfactorily complete each year of school and be a full-time matriculated student.

R434-20-15. Scholarship Recipient Obligations.

(1) A scholarship recipient must maintain minimum continuous registration to maintain full-time student status until he completes all requirements for his degree. The maximum years leading to a degree may not exceed six years, unless extended pursuant to R434-20-11.

(2) Within six months before and not exceeding one month following completion of postgraduate training, a scholarship recipient shall provide to the department documented evidence from an eligible site of its intent to hire him.

(3) Upon completion of schooling or postgraduate training, the scholarship recipient is responsible for finding employment at an eligible site in a medically underserved urban area of Utah.

(4) A scholarship recipient must obtain an unrestricted license to practice in Utah prior to beginning practice at the approved site.

(5) A scholarship recipient must obtain approval from the committee prior to beginning to fulfill his service obligation at an eligible site.

(6) A scholarship recipient must begin employment at the approved site within six months of completion of postgraduate training.

(7) A scholarship recipient, upon completion of postgraduate training, must demonstrate willingness to serve special populations by:

(a) accepting Medicare, Medicaid, ~~Utah Medical Assistance Program, and Children's Health Insurance Program~~ patients;

(b) providing care regardless of patient's ability to pay;

(c) showing ability and willingness to provide care.

(8) The minimum length of service obligation is two years, or such longer period to which the applicant and the committee agree.

(9) The scholarship recipient must obtain committee approval prior to changing the approved site where he fulfills his service obligation.

R434-20-16. Dentist Scholarship Recipient Obligations.

(1) A Dentist scholarship recipient must abide by the scholarship recipient obligations listed in Section R434-20-15 and complete the following service obligations:

(a) must attend a dental school ~~in the United States or Canada~~ accredited by the American Dental Association.

(b) ~~[must enroll in a one year residency;]~~ must pass the Utah Dentist and Dental Hygienist Law Examination, pursuant to Subsection R156-69-302b(1).

(c) must pass the Western Regional Examining Board ~~;~~ pursuant to Subsection R156-69-302b(2)(a);

~~(d) must pass the~~ Central Regional Dental Testing Service, Inc.; ~~or~~ Northeast Regional Board of Dental Examiners, Inc.; ~~or~~ Southern Regional Testing Agency, Inc., examinations ~~;~~ pursuant to Subsection R156-69-302b(2)(b).

~~(e) must pass the Utah Dentist and Dental Hygienist Law Examination, pursuant to Subsection R156-69-302b(1).~~

R434-20-17. Mental Health Therapist Scholarship Recipient Obligations.

(1) A clinical psychologist scholarship recipient must abide by the scholarship recipient obligations listed in Section R434-20-15 and complete the following service obligations:

(a) must attend a school ~~in the United States or Canada~~ accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education" and recognized by the Association of State and Provincial Psychology Boards as listed in the "Doctoral Psychology Programs Meeting Designation Criteria", pursuant to Subsection R156-61-302a(1), awarding a degree that meets the requirements of Subsection 58-61-304(1)(d).

(b) must complete a minimum two year supervised clinical internship.

(c) must pass the Examination for the Professional Practice of Psychology developed by the American Association of State Psychology Board, pursuant to Subsection R156-61-302c(1)(a).

(d) must pass the Utah Psychology Law Examination, pursuant to Subsection R156-61-302c(1)(b).

(2) A clinical social worker scholarship recipient must abide by the scholarship recipient obligations listed in Section R434-20-15 and complete the following service obligations:

(a) must attend a school[~~in the United States or Canada~~] accredited by the United States Council on Social Work Education or the Canadian Association of Schools of Social Work, awarding a degree in social work.

(b) must complete a minimum 4,000 hours of supervised clinical social work and mental health therapy training which includes 1,000 hours of face to face therapy completed over a duration of not less than two years.

(c) must pass the Utah Social Work Law, Rules, and Ethics Examination, pursuant to Subsection R156-60a-302d(1)(a).

(d) must pass the National Basic Examination of the American Association of State Social Work Boards, pursuant to Subsection R156-60a-302d(2)(b).

(e) must pass the National Clinical Examination of the American Association of State Social Work Boards or the Clinical Social Workers Examination of the State of California, pursuant to Subsection R156-60a-302d(1)(b).

(3) A marriage and family therapist scholarship recipient must abide by the scholarship recipient obligations listed in Section R434-20-15 and complete the following service obligations:

(a) must attend a school[~~in the United States or Canada~~] accredited by or in a candidacy status by the Commission on Accreditation for Marriage and Family Therapy Education, awarding a degree in marriage and family therapy.

(b) must complete 4,000 hours of marriage and family therapy training and 1,000 hours supervised mental health therapy training completed over a duration of not less than one year.

(c) must pass the Utah Marriage and Family Therapy Law and Ethics Examination and the Examination of Marital and Family Therapy written for the Association of Marital and Family Therapy Regulatory Boards, pursuant to Subsection R156-60b-302d(1).

(4) A professional counselor scholarship recipient must abide by the scholarship recipient obligations listed in Section R434-20-15 and complete the following service obligations:

(a) must attend a school[~~in the United States or Canada~~] accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education", for the Commission of Recognition of Postsecondary Accreditation of the American Council on Education, awarding a degree that meets the requirements of Subsection 58-60-405(4).

(b) must complete 4,000 hours of supervised professional counselor training and 1,000 hours of supervised training in mental health therapy completed over a duration of not less than one year.

(c) must pass the Utah Professional Counselor Law, Rules, and Ethics Examination, pursuant to Subsection R156-60c-302d(1)(a).

(d) must pass the National Counseling Examination of the National Board of Certified Counselors, pursuant to Subsection R156-60c-302d(1)(b).

(e) must pass the National Clinical Mental Health Counseling Examination of the National Board of Certified Counselors, pursuant to Subsection R156-60c-302d(1)(c).

R434-20-18. Physician Scholarship Recipient Obligations.

(1) A Physician scholarship recipient must abide by the scholarship recipient obligations listed in Section R434-20-15 and complete the following service obligations:

(a) must attend a school of allopathic or osteopathic medicine[~~in the United States or Canada~~], accredited by the Liaison Committee on American Medical Education or by the American Osteopathic Association Bureau of Professional Education, which awards a degree of Doctor of Medicine or Doctor of Osteopathy.

(b) must enroll in and complete a minimum three year postgraduate training program in the United States or Canada accredited by the Accreditation Committee on Graduate Medical Education or the American Osteopathic Association Bureau of Professional Education or accredited by the Royal College of Physicians and Surgeons of Canada.

(c) must pass the examination requirements for licensure as a physician or surgeon or osteopathic physician or surgeon in Utah, pursuant to Section R156-67-302d or Section R156-68-302b.

R434-20-19. Physician Assistant Scholarship Recipient Obligations.

(1) A Physician Assistant scholarship recipient must abide by the scholarship recipient obligations listed in Section R434-20-15 and complete the following service obligations:

(a) must enroll in and complete a physician assistant program accredited by the Commission on Accreditation of Allied Health Education Programs.

(b) shall take the National Commission on the Certification of Physician Assistants/National Board of Medical Examiners Physician Assistant National Certification Exam pursuant to Section R156-70a-302(1), the first time it is offered after completion of physician assistant schooling. After the scholarship recipient passes this exam he shall obtain a permanent unrestricted license to practice as soon as possible.

(c) if the scholarship recipient fails the National Commission on the Certification of Physician Assistants/National Board of Medical Examiners Physician Assistant National Certification Exam, he must retake the exam within one year of failure of the national certification exam. If the scholarship recipient fails the exam a second time, or fails to retake the exam, he shall be in default of the scholarship contract. The period when the temporary license is lost due to failing the exam and the scholarship recipient is unable to practice at an approved site does not count against retiring the obligated service under the contract.

(d) shall take the Utah Physicians Assistant Law and Rules Examination, pursuant to Section R156-70a-302(2).

(e) must obtain a temporary license to practice medicine as a physician assistant prior to beginning service obligation at the approved site.

(f) must submit a copy of the delegation of services agreement signed by the supervising physician and substitute supervising physician for approval by the committee.

R434-20-20. Extension of Contract with Scholarship Recipient.

(1) The committee may extend the period within which the scholarship recipient must complete his dental, medical, mental health therapist, osteopathic, or physician assistant education:

- (a) if the scholarship recipient has a serious illness;
 - (b) if the scholarship recipient is activated by the military;
 - (c) for other good cause shown, as determined by the committee.
- (2) The service obligation may be extended only at an eligible site.

R434-20-21. Schedule of Breach of Scholarship Contract Repayment.

(1) A scholarship recipient who breaches his scholarship contract shall be evaluated based on the criteria listed in Subsections 26-9e-9(4) and 26-9e-9(5), as well as the following criteria:

(a) A scholarship recipient who fails to complete the required minimum postgraduate training within the time period agreed upon with the committee shall within 90 days after the deadline for completing his postgraduate training or within 90 days of his failure to continue his postgraduate training, whichever occurs earlier, repay:

- (i) all scholarship money received according to a schedule established by the committee;
- (ii) if not repaid within one year of default, 12% per annum interest on unrepaid scholarship amounts.

(b) The amount to be paid back shall be determined from the end of the month in which the scholarship recipient breached the contract as if the scholarship recipient had breached at the end of the month.

(c) The breaching scholarship recipient shall pay the total amount due within four years of breaching the contract. The scheduled pay back may not be less than four equal payments.

R434-20-22. Release of Recipient from Service Obligation.

(1) The committee may release a recipient from his service obligation without penalty:

- (a) if the service obligation has been fulfilled;
- (b) if he dies;
- (c) for other good cause shown, as determined by the committee.

(2) Extreme hardship sufficient to release the recipient without penalty includes:

(a) inability to complete dental, medical, mental health therapist, osteopathic, or physician assistant school or fulfill service obligation due to permanent disability that prevents the recipient from completing school or performing any work for remuneration or profit;

(b) a family member, for which the recipient is the principal care giver, has a life-threatening chronic illness.

R434-20-23. Eligible Site Determination.

(1) Criteria the committee shall use to determine an eligible site include:

- (a) Within a medically underserved urban area:
 - (i) the percentage of the population with incomes under 200% of the federal poverty level;
 - (ii) the percentage of the population 65 years of age and over;
 - (iii) the percentage of the population under 18 years of age;
 - (iv) the percentage of population that is homeless,
 - (v) the percentage of population that is migrant or seasonal farm workers,

- (vi) the percentage of population that has HIV/AIDS.
- (vii) the distance to the nearest primary health care provider and barriers to reaching the primary health care provider.

(c) The committee may give preference to sites which provide letters of support from:

- (i) a majority of practicing primary health care providers in the service area,
- (ii) county and civic leaders,
- (iii) hospital administrators,
- (iv) business leaders, local chamber of commerce, citizens, and
- (v) local health departments.

(2) An eligible site approved to have a grant or scholarship recipient must offer a salary and benefit package competitive with salaries and benefits of other providers in the service area.

(3) A medically underserved urban area must apply to and gain approval from the committee in order to be determined eligible for a scholarship or grant recipient to complete their service obligation.

R434-20-24. Annual Assessment and Strategy.

(1) The committee shall annually complete an assessment and strategy on techniques to promote and facilitate the recruitment and retention of primary health care providers to serve special populations in medically underserved areas of the state.

(2) The committee shall develop alternative service obligation criteria that a grant or scholarship recipient may use to fulfill his service obligation if the grant or scholarship recipient is unable to fulfill his service obligation at an approved site due to reasons beyond his control.

R434-20-25. Reporting.

The committee may require the recipient to provide information regarding the academic performance, commitment to medically underserved urban areas, continuing financial need, service obligation fulfillment, and other information reasonably necessary for the administration of the program during the period the recipient is in dental, medical, mental health therapist, osteopathic, or physician assistant school; postgraduate training; and in practice.

KEY: grants, scholarships

[January 7, 1999]2000

26-9e



Human Services, Administration,
Administrative Services, Licensing

R501-12

Foster Care Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 22629

FILED: 01/31/2000, 12:41

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Licensing Board Decision to clarify licensing of more than one service of the Department of Human Services (DHS) in a home. The wording of this rule was approved by the Legislative Administrative Rules Committee on November 24, 1999.

SUMMARY OF THE RULE OR CHANGE: Providers shall not be licensed or certified to provide foster care for children in the same home in which they are providing child care or in another licensed human service program.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-2-101 through 62A-2-121

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** Clarification of this requirement has no anticipated direct impact on the state budget. The wording has been clarified, but the requirements have not changed.

❖**LOCAL GOVERNMENTS:** There is no anticipated impact on local government. The rule has not been changed, only clarified.

❖**OTHER PERSONS:** This rule does not affect foster parents who are seeking licenses or who are currently licensed. This rule is only for clarification.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule does not affect foster parents who are seeking licenses or who are currently licensed. This rule change is to clarify the wording only.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The change in the foster care licensing rule will have virtually no fiscal impact on businesses. Foster care is provided by individuals in their homes.

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

Human Services
Administration, Administrative Services,
Licensing
Room 303
120 North 200 West
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Gayle Sedgwick at the above address, by phone at (801) 538-4242, by FAX at (801) 538-4553, or by Internet E-mail at hsadm2.gsedgwic@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/16/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2000

AUTHORIZED BY: Reta D. Oram, Director

R501. Human Services, Administration, Administrative Services, Licensing.**R501-12. Foster Care Rules.****R501-12-1. Purpose Statement.**

The purpose of these standards is to establish the minimum requirements for licensure of foster homes and proctor homes for children in the Department of Human Services, hereinafter referred to as DHS.

R501-12-2. Definitions.

A. "Foster care" means the provision of care which is conducive to the physical, social, emotional and mental health of children or adjudicated youth who are temporarily unable to remain in their own homes.

B. "Proctor care" means the provision of foster care for only one youth at a time placed in a licensed foster home. The youth shall be adjudicated to the custody of the Division of Youth Corrections.

C. "Licensing agent" means a person who is authorized to certify foster and proctor care providers in accordance with the legally approved Foster Care Rules.

D. "Foster care agency" is any authorized licensed private agency certifying providers for foster care services.

E. "Child" means anyone under 18 years of age with the exception of DYC proctor care where custody and guardianship may be maintained to the age of 21.

F. Rules applying to foster care are also applicable to proctor care unless otherwise specified below.

R501-12-3. Authority.

Foster care services are provided pursuant to 62A-4a-106 for the Division of Child and Family Services, hereinafter referred to as DCFS, and 62A-7-104 for the Division of Youth Corrections, hereinafter referred to as DYC.

R501-12-4. Licensing and Renewal.

A. **Application:** An individual or legally married couple age 21 and over may apply to be foster parents. The applicant shall be provided with an application and a copy of the foster care licensing standards. The application shall require the applicant to list each member of the applicant's household.

B. Medical Information:

1. At the time of application, each potential foster parent shall obtain and submit to the foster care agency or the Office of Licensing, hereinafter referred to as OL, a medical reference letter, completed by a licensed health care professional, which assesses the physical ability of the individual to be a foster parent. On an annual basis thereafter, each foster parent shall submit a personal health status statement.

2. A psychological examination of a potential or current foster parent may be required by OL or the foster care agency if there are questions regarding the individual's mental stability which may impair functioning as a foster parent. The psychological examination shall be arranged and paid for by the foster parent.

C. References:

The applicant shall submit the names of individuals not related to the applicant who may be contacted by the foster care agency or OL for a reference. The named individuals, such as neighbors,

school personnel, or clergy, shall be knowledgeable of the ability of the potential foster parents to nurture children. Three acceptable letters of reference must be received by the foster care agency or OL before a license will be issued.

D. Background Screening:

1. Criminal Background Screening, referred to as CBS, pursuant to 62A-2-120, requires that all child foster care applicants or persons 18 years of age or older living in the home must have the criminal background screening completed. This shall be completed on initial home approval and yearly thereafter. In accordance with 62A-2-120, no applicant can be licensed to provide foster care services when the applicant has been convicted of a felony.

2. The child abuse data base shall also be screened for each applicant or persons 18 years of age or older living in the home to see if a report of alleged abuse and neglect has been substantiated. This shall be done on initial home approval and yearly thereafter.

a. In accordance with 62A-4a-116(2)(b) the following types of abuse and neglect shall be considered for licensing purposes:

- 1) physical abuse,
- 2) sexual abuse,
- 3) sexual exploitation,
- 4) abandonment, medical neglect resulting in death, disability, or serious illness, or
- 5) chronic or severe neglect.

b. In accordance with 62A-2-121, if the name of any individual living in the home appears on the child abuse data base as substantiated, a license may be denied, approved, or renewed based on a comprehensive review of the individual circumstances, conducted by DHS, in accordance with R501-18.

E. Home Study: There shall be a current home study report on record prepared, or reviewed and signed off, by a licensed Social Worker. A home study shall be completed for each potential foster home. The home study shall be updated annually with a home visit.

F. Provider Code of Conduct: Each foster care applicant shall read, abide by, and sign a current copy of the DHS Provider Code of Conduct.

G. Training: Each foster care applicant shall complete the required pre-service training as specified in R501-12-5 prior to receiving a license.

H. Approval or Denial:

1. Following pre-service training and submission of all required documentation, the home study and assessment of an applicant shall be completed.

2. A license shall be issued for applicants who meet Foster Care Licensing Rules. In addition, the applicants shall be responsible to identify and meet any local ordinances applicable to the type of care.

3. The decision to approve or deny the applicant shall be made on the basis of observable facts and the professional judgement of the foster care agency or OL regarding the safety and sanitation conditions of the home.

4. No person may be denied a foster care license on the basis of race, color, or national origin of the person, or a child, involved, pursuant to the Social Security Act, Section 471(a)(18)(A).

5. The provider shall be evaluated annually for compliance with standards when renewing a license.

6. Kinship and Specific Home Approval: An applicant may be licensed for placement of one specific child or sibling group. The home study shall be completed and all licensing requirements met.

This license is valid for the duration of the specific placement only and must be renewed annually.

7. Licensure approval is not a guarantee that a child will be placed in the home. Additional requirements for adoptive parents and adoptive assessments for children in State custody are included in R512-41(3)(4).

8. Providers shall not be licensed or certified to provide foster care for children in the same home in which they are providing child care, as defined in UCA 26-39-102, or a licensed human service program, as defined in UCA 62A-2-101. ~~Limitations on Licensed Providers:~~

~~a. Providers shall not be licensed to provide care for both adults and children.~~

~~b. Providers shall not be licensed to provide both child care and foster care.~~

~~c. Providers shall not be licensed for the following configurations of services; group care and child emergency care, or group care and foster care.]~~

9. The Office of Licensing Director or designee may grant a variance to a rule if it is in the best interest of the specific child.

10. All providers shall report any major changes as listed in a. through e. in their lives to the licensor or foster care agency within 48 hours. These changes shall be re-evaluated within one month of the change by the licensor or foster care agency. A major change in the lives of the foster parents shall include, but is not limited to the following:

- a. death or serious illness among the members of the foster family,
- b. separation or divorce,
- c. loss of employment,
- d. change of residence, or
- e. suspected abuse or neglect of any child in the foster home.

R501-12-5. Training.

A. Applicants shall attend training required by the applicable DHS Division or other approved entity and submit verification of completed training to the licensor or foster care agency.

B. At least one spouse shall complete the entire training series in order for the home to be licensed. The other spouse shall attend at least one third of the training.

C. Providers associated with a foster care agency that is contracted to provide foster care or proctor care services shall meet the training requirements specified by the contract.

R501-12-6. Foster Parent Requirements.

A. Personal characteristics of foster parents shall include the following:

1. Foster parents shall be in good health, able to provide physical and emotional care to the child.

2. Foster parents shall be emotionally stable and responsible persons over 21 years of age. Legally married couples and single individuals, may be foster parents.

3. Foster parents shall have the ability to help the child grow and change in behavior.

4. Foster parents shall not be dependent on the foster care payment for their expenses beyond those associated with foster care, and shall allocate funds as directed by Division policy. Verification of income shall be submitted with the application to OL or foster care agency on an annual basis.

5. Division employees shall not be approved as foster parents to care for children in the custody of their respective Divisions. An employee may provide care for children in the custody of a different Division with approval of the Regional Director in accordance with DHS conflict of interest policy.

6. Owners, directors, and members of the governing body for foster care agencies shall not serve as foster parents.

7. Foster parents shall follow agency rules and work cooperatively with the agency, State Court, and law enforcement officials.

B. Family Composition shall meet the following:

1. The number, ages, and gender of persons in the home shall be taken into consideration as they may be affected by or have an effect upon the child.

2. Variance requests for the following must address why a variance is in the best interests of the child, and how basic health and safety requirements will be maintained, in accordance with R501-1-8.

a. No more than two children under the age of two, shall reside in a foster home, including natural children.

b. No more than two non-ambulatory children shall be in a foster home including infants under the age of two.

c. No more than four foster children shall be in any one home.

d. No more than six children shall be in a foster home including the foster parent's children under the age of 18.

e. No more than one foster child shall be in any one home designated for proctor care by agencies contracted with DYC.

R501-12-7. Physical Aspects of Home.

A. The home shall be located in a vicinity in which school, church, recreation, and other community facilities are reasonably available.

B. The physical facilities of the home shall be clean, in good repair, and shall provide for normal comforts in accordance with accepted community standards.

C. The home shall be free from health and fire hazards. Each home shall have a working smoke detector on each floor and at least one approved fire extinguisher. An approved fire extinguisher shall be inspected annually and be a minimum of 2A:10BC five point, rated multi-purpose, dry chemical fire extinguisher.

D. There shall be sufficient bedroom space to provide for the following:

1. rooms are not shared by children of the opposite sex, except infants under the age of two years,

2. children do not sleep in the parents' room, except infants under the age of two years,

3. each child has his or her own solidly constructed bed adequate to the child's size,

4. a minimum of 80 square feet is provided in a single occupant bedroom and a minimum of 60 square feet per child is provided in a multiple occupant bedroom excluding storage space, and

5. no more than four children are housed in a single bedroom.

E. Sleeping areas shall have a source of natural light and shall be ventilated by mechanical means or equipped with a screened window that opens.

F. Closet and dresser space shall be provided within the bedroom for the children's personal possessions and for a reasonable degree of privacy.

G. There shall be adequate indoor and outdoor space for recreational activities.

H. Foster homes shall offer sufficiently balanced meals to meet the child's needs.

I. All indoor and outdoor areas shall be maintained to ensure a safe physical environment.

J. Areas determined to be unsafe, including steep grades, cliffs, open pits, swimming pools, high voltage boosters, or high speed roads, shall be fenced off or have natural barriers.

K. Equipment: All furniture and equipment shall be maintained in a clean and safe condition. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet individual needs.

L. Exits: There shall be at least two means of exit on each level of the home.

R501-12-8. Safety.

A. Foster families shall conduct and document fire drills at least quarterly.

B. Foster parents shall provide training to children regarding response to fire warnings and other instructions for life safety.

C. The home shall have a telephone. Telephone numbers for emergency assistance shall be posted next to the telephone.

D. The home shall have an adequately supplied first aid kit.

E. Foster parents maintaining firearms in the home shall assure that the firearms are inaccessible to children at all times. Firearms and ammunition shall be securely locked. Firearms kept in the home or on the premises will be rendered inoperable when possible.

F. No firearms shall be allowed in foster homes that contract with DYC.

G. Foster parents who have alcoholic beverages in their home shall assure that the beverages are kept inaccessible to children at all times.

H. There shall be locked storage for hazardous chemicals and materials.

R501-12-9. Emergency Plans.

A. Foster parents shall have a written plan of action for emergencies and disaster to include the following:

1. evacuation with a pre-arranged site for relocation,
2. transportation and relocation of children when necessary,
3. supervision of children after evacuation or relocation, and
4. notification of appropriate authorities.

B. Foster parents shall have a written plan for medical emergencies, including arrangements for medical transportation, treatment and care.

C. Foster parents shall immediately report any serious illness, injury or death of a foster child to the appropriate Division or foster care agency worker and OL licenser.

R501-12-10. Infectious Disease.

Foster parents shall abide by policies and procedures designed to prevent or control infectious and communicable diseases in the home.

R501-12-11. Medication.

A. Foster parents shall administer prescribed medication, according to the written directions of a licensed physician.

Medicine shall only be given to the child for whom it was prescribed.

B. Medication shall not be discontinued without the approval of the licensed physician, side effects shall be reported to the licensed physician.

C. Non-prescriptive medications may be administered by foster parents according to manufacturer's instructions.

D. Medications shall not be administered by the foster child.

E. Medication shall not be used for behavior management or restraint unless prescribed by a licensed physician with notification to the Division or foster care agency worker.

F. There shall be locked storage for medication.

R501-12-12. Transportation.

A. Foster parents shall provide routine transportation. In case of an emergency a means of transportation shall be arranged by the foster parents.

B. Drivers of vehicles shall have a valid Utah Drivers License and follow safety requirements of the State.

C. Transportation shall be provided in an enclosed vehicle which has been safety inspected and equipped with seatbelts and an appropriate restraint for infants and young children.

D. An emergency telephone number shall be in the vehicle used to transport children.

E. Each vehicle shall be equipped with an adequately supplied first aid kit.

R501-12-13. Behavior Management.

A. Foster parents shall provide appropriate supervision at all times.

B. Foster parents shall not use, nor permit the use of corporal punishment, physical or chemical restraint, infliction of bodily harm or discomfort, deprivation of meals, rest or visits with family, humiliating or frightening methods to control the actions of children.

C. The foster parents' methods of discipline shall be constructive. In exercising discipline, the child's age, emotional make-up, intelligence and past experiences shall be considered.

D. Passive restraint shall be used only in behaviorally related situations as a temporary means of physical containment to protect the child, other persons, or property from harm. Passive restraint shall not be associated with punishment in any way.

E. Foster parents shall inform the Division or foster care agency worker of any extreme or repeated behavioral problems of a child placed in the foster home.

R501-12-14. Child's Rights in Foster Care.

A. The foster parent shall adhere to the following:

1. allow the child to eat meals with the family, and to eat the same food as the family unless the child has a special prescribed diet,

2. allow the child to participate in family activities,

3. protect privacy of information,

4. not make copies of consumer records,

5. explain the child's responsibilities, including household tasks, privileges, and rules of conduct,

6. not allow discrimination,

7. treat the child with dignity,

8. allow the child to communicate with family, attorney, physician, clergyman, and others, except where documented otherwise,

9. follow visitation rights as provided by DHS or foster care agency worker,

10. allow the child to send and receive mail providing that security and general health and safety requirements are met, foster parents may only censor or monitor a foster child's mail or phone calls by court order,

11. provide for personal needs and clothing allowance, and

12. respect the child's religious and cultural practices.

R501-12-15. Record Keeping.

A. Foster parents shall maintain the following:

1. current license certificate,

2. copy of each contract with the Department of Human Services,

3. record of money provided to each foster child,

4. record of expenditures for each foster child, and

5. documentation of special need payments on behalf of the foster child.

B. Foster parents shall maintain the out of home placement information record for each child in their care to include the following:

1. placement information for each child in out of home care,

2. biographical information, including an emergency contact name and telephone number,

3. documentation of the health care record of each child, including the following:

a. immunizations,

b. physical, mental, visual, and dental examinations,

c. emergencies requiring medical treatment, and

d. medication, when applicable, and

4. summary of family visits and contacts, when appropriate, according to the service plan.

C. Foster parents shall ensure that the out of home record accompanies the child or is returned to the foster care agency upon relocation of the child.

D. The OL staff shall maintain a separate record for each provider.

KEY: licensing, human services, foster care

~~(September 1, 1999)~~ **March 17, 2000**

62A-2-101-121

◆ ————— ◆

Human Services, Recovery Services

R527-34-1

Non-AFDC Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 22628

FILED: 01/31/2000, 11:34

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The current rule needs to be changed because: 1) it refers to the old AFDC (Aid to Families with Dependent Children) program which has been replaced by the financial assistance program under Title IV-A of the Social Security Act; 2) the name of the specific agency within Recovery Services which provides child support services is not indicated; 3) it is not clear that enforcement (or initiation of collection) of spousal support is not allowed after the child has emancipated (usually when child turns 18, graduates from high school, marries, or joins armed forces); 4) the state law at Section 78-45-7.16 requires that a parent pay his share of the actual expenses for child care provided to the child on a monthly basis, and there is no provision in the rule for collecting those ongoing expenses; 5) enforcement of medical insurance coverage for the child applies to "either parent" (not "one of the parties") as specified in administrative orders issued by the Office of Recovery Services/Child Support Services (ORS/CSS) and as provided in state law at Section 78-45-7.15; and 6) it is not clear that the costs ORS/CSS has elected to recover from the recipient of child support services (listed in Section R527-35-1) will not be recovered from the noncustodial parent.

SUMMARY OF THE RULE OR CHANGE: The title of the rule has been changed to "Non-IV-A Services." "The Office of Recovery Services" has been changed to "The Office of Recovery Services/Child Support Services." "The office" has been changed to "ORS/CSS" wherever it appears. Wording has been added to require income withholding to be in effect before emancipation of the child in order for collection of spousal support to continue after emancipation. A paragraph has been added to allow ORS/CSS to collect ongoing child care expenses when specific criteria are met. The paragraph concerning enforcement of medical insurance has been changed to apply to "either parent," rather than only one parent. To clarify which costs ORS/CSS has elected not to recover from the noncustodial parent, a reference to Section R527-35-1 ("Non-AFDC Fee Schedule") has been added.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-11-107

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** Only two of the proposed rule changes represent a change in ORS/CSS procedures: 1) collecting ongoing day care costs, and 2) enforcing medical insurance against "either parent," rather than only one parent. Because collecting day care costs will never involve enforcement action (it can only be done if there is a request and both parents agree on the amount), the only cost to ORS/CSS will be to update case accounts and income withholding orders to reflect an increase in current support as appropriate. Although collecting medical insurance costs from "either parent" may appear to be a significant change, in practice ORS/CSS will enforce against only one parent at a time, and the obligor (person who owes a debt) will be considered to have primary responsibility for the coverage. As a result, there should not be an appreciable increase in

costs to the state to enforce medical insurance coverage. However, this change should result in more children being covered by medical insurance purchased by parents, which should represent a savings to the state in payment of medical expenses for uninsured children. Because the number of cases involving day care costs and the availability of insurance to parents will vary, it is not possible to closely approximate costs and savings to the state which result from the proposed rule changes.

❖**LOCAL GOVERNMENTS:** None--the administrative rules of the Office of Recovery Services do not apply to local governments.

❖**OTHER PERSONS:** Of the two rule changes which represent a change in ORS/CSS procedures, only enforcement of medical insurance against "either parent" may result in additional costs to other persons. When insurance coverage is not available to an obligor, the obligee (person to whom a debt is owed), who is also ordered to obtain insurance coverage for the children under the "either parent" provision of a support order, may be required to provide the coverage (if the case is not voluntarily closed). The overall cost will depend on the number of obligees affected and the individual cost of insurance plans. Because parents are already required by state law (Section 78-45-7.16) to pay ongoing day care costs when day care is provided, collection by ORS/CSS (when both parents agree) will only provide a convenience for both parents which may represent a savings to them. The total amount of savings for affected parents will vary based on individual circumstances.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Enforcement of medical insurance against "either parent" may result in additional costs to an obligee required to pay for the coverage when it is not available to the obligor. The total cost will depend on the individual insurance plan. None of the other proposed changes involve compliance costs for affected persons (and do not involve use of enforcement measures).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses which implement income withholding orders from the Office of Recovery Services may be indirectly affected by the proposed rule change involving collection of ongoing day care expenses. An employer may be required to increase the amount of the support deduction when day care services for an employee's children begin, and decrease it when those services end. However, it is not anticipated that there will be an increase in overall income withholding costs to businesses. None of the other proposed rule changes is expected to create a fiscal impact on businesses.

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

Human Services
Recovery Services
Fourteenth Floor, Eaton/Kenway Building
515 East 100 South
PO Box 45011
Salt Lake City, UT 84145-0011, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Wayne Braithwaite at the above address, by phone at (801) 536-8986, by FAX at (801) 536-8509, or by Internet E-mail at hsadmin.hsorsslc.wbraithw@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/16/2000; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR , , .

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2000

AUTHORIZED BY: Emma Chacon, Director

R527. Human Services, Recovery Services.

R527-34. Non-~~[AFDC]~~IV-A Services.

R527-34-1. Non-~~[AFDC]~~IV-A Services.

1. The Office of Recovery Services/Child Support Services (ORS/CSS) will provide the following services to recipients of child support services:

- a. Attempt to locate the obligor;
 - b. Attempt to collect the current child support amount;
 - c. Attempt to collect past-due child support which is owed on behalf of a child, regardless of whether the child is a minor;
 - d. Attempt to enforce court-ordered spousal support if the minor child of the parties resides with the obligee and [the office]ORS/CSS is enforcing the child support order; ORS/CSS will only continue to collect spousal support after the child has emancipated if income withholding is already in effect;
 - e. Attempt to collect child care expenses if the past-due amount has been reduced to a sum-certain judgment;
 - f. Attempt to collect ongoing child care expenses if all of the following criteria are met:
 - i. the obligor or the obligee made a specific request for ORS/CSS to collect ongoing child care;
 - ii. the child care obligation is included as a specific monthly dollar amount in a court order along with a child support obligation; and,
 - iii. neither parent is disputing the monthly child care amount;
 - [f]g. Attempt to collect medical support if the amount is specified as a monthly amount due in the order or has been reduced to a sum-certain judgment;
 - [g]h. Attempt to enforce medical insurance if [the court]either parent has been ordered [one of the parties]-to maintain insurance;
 - [h]i. Attempt to establish paternity;
 - [i]j. Review the support order for possible adjustment of the support amount, in compliance with R527-231.
2. ~~[The Office]~~ORS/CSS adopts the federal regulations as published in 45 CFR 302.33, October 1, ~~[1995]~~1998, ed., which are incorporated by reference. 45 CFR 302.33 provides options which ~~[the office]~~ORS/CSS may elect to implement. ~~[The office]~~ORS/CSS elected to implement the following options:
- a. ~~[The office]~~ORS/CSS has elected to charge no application fee to applicants for child support enforcement services.
 - b. ~~[The office]~~ORS/CSS has elected to recover costs from the individual receiving child support enforcement services. The costs which will be recovered are listed in R527-35-1.

c. ~~[The office]~~ORS/CSS has elected not to recover from the non-custodial parent the costs listed in R527-35-1 which are paid by the individual receiving child support services~~[from the absent parent].~~

KEY: child support

~~[April 8, 1997]~~2000

62A-11-107

Notice of Continuation February 11, 1997



Insurance, Administration
R590-131
Disability Coordination of Benefits Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 22640

FILED: 02/01/2000, 15:21

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To make the rule clearer and to clarify coordination of benefit requirements.

SUMMARY OF THE RULE OR CHANGE: 1) Adding definition of "custodial parent"; 2) Section R590-131-4 is being updated to comply with the wording now being used in divorce decrees, which complies with National Association of Insurance Commissioner's Model Regulation language. 3) the wording of Section R590-131-5 clarifies the procedure secondary insurance plans must follow in the coordination of benefits (COB); 4) Subsection R590-131-6(B)(3)(G)(1) limits the ability of an insurer to recall payments made under COB issues to 120 days. 5) Subsection R590-131-6(B)(3)(J) says that when insurers cannot decide who is primary and secondary within 30 calendar day of payment requirement, each insurer must make a 50% payment and work out the details later.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-22-619

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: None--the changes in this rule will not require insurers to change their rates or policy forms and as a result increase the amount of fees coming into the department. Nor will the changes require additional or reduced work on the part of the department.
- ❖LOCAL GOVERNMENTS: This rule will not affect local government; therefore, no cost or savings. The rule is regulated by a state governmental agency to which all fees are paid by its licensees.
- ❖OTHER PERSONS: The changes to this rule help take the insured and the provider out of the middle of the issue of coordinating benefits and rest it upon the shoulders of the

insurers responsible to provide the coverage. This should not create a fiscal impact on the insurers, the providers, or the insured. The changes clarify the procedures for coordinating benefits to avoid confusion and delay in handling claims.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should be no fiscal impact due to this rule because it clarifies procedures to be taken by insurers in the coordination of benefits. It sets time limits for which claim payments may be reversed. Insurers will not be able to ask the insured or provider for money back after 120 days, but instead will need to go to the other coordinating insurer to retrieve the money. The rule also requires that claim payments be made by the insurer after complete information has been received. This will speed up claim payments to the insured and providers, and insurers will not be able to delay claims because of problems determining which company is the primary or secondary insurer.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes in this rule are for clarification purposes and to extricate the insured from the middle of disputes between coordinating insurers. There should be no fiscal impact on insurers, but should facilitate the prompt payment of health insurance claims.

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

Insurance
Administration
3110 State Office Building
Salt Lake City, UT 84114,
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at (801) 538-3803, by FAX at (801) 538-3829, or by Internet E-mail at jdmain.jwhitby@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/17/2000; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 03/08/2000, 11:00 a.m., 1112 State Office Building, Salt Lake City, UT 84114.

THIS RULE MAY BECOME EFFECTIVE ON: 03/18/2000

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-131. Disability Coordination of Benefits Rule.

R590-131-1. Authority.

This rule is adopted and promulgated pursuant to Subsection 31A-2-201(3)(a) and Section 31A-22-619.

R590-131-2. Purpose.

The purpose of this rule is to:

A. permit, but not require, plans to include a coordination of benefits, or COB, provision;

B. establish an order of priority in which plans pay their claims;

C. provide the authority for the orderly transfer of information needed to pay claims promptly;

D. reduce duplication of benefits by permitting a reduction of the benefits paid by a plan when the plan, pursuant to this rule, does not have to pay its benefits first;

E. reduce claims payment delays; and

F. make all contracts that contain a COB provision consistent with this rule.

R590-131-3. Definitions.

A. Allowable Expense means:

1. The amount on which a plan would base its benefit payment for covered services in the absence of any other coverage.

2. When a plan provides benefits in the form of services, the reasonable cash value of each service will be considered as both an allowable expense and a benefit paid.

3. The difference between the cost of a private hospital room and the cost of a semi-private hospital room is not considered an allowable expense under the above definition unless the patient's stay in a private hospital room is medically necessary in terms of generally accepted medical practice.

4. When COB is restricted in its use to a specific coverage in a contract, for example, major medical or dental, the definition of allowable expense must include the corresponding expenses or services to which COB applies.

B. Claim. A request that benefits of a plan be provided or paid is a claim. The benefits claimed may be in the form of:

1. services (including supplies);

2. payment for all or a portion of the expenses incurred;

3. a combination of (1) and (2) above; or

4. an indemnification.

C. Coordination of Benefits or COB is the process of determining which of two or more disability insurance policies, or other policies specifically included in this rule, covering a loss or claim, will have the primary responsibility to pay the loss or claim, and also the manner and extent to which the other policies shall pay or contribute.

D. Custodial Parent means the parent awarded custody of a child by a court decree. In the absence of a court decree, the parent with whom the child resides more than one half of the calendar year without regard to any temporary visitation, is the custodial parent.

E. Hospital Indemnity Benefits. ~~These are~~ Means benefits not related to expenses incurred. The term does not include reimbursement-type benefits even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim.

~~E]~~ Plan. Plan means a form of coverage with which coordination is allowed. The definition of plan in the contract must state the types of coverage which will be considered in applying the COB provision of that contract.

1. Any definition that satisfies this Subsection, R590-131-3.E., may be used.

2. This rule uses the term plan. However, a contract may, instead, use "Program" or some other term.

3. Plan shall include:

a. individual, group, or HMO health insurance contracts providing hospital expense or medical surgical expense benefits, except those explicitly excluded under Subsection R590-131-3.E.4.;

b. group, group-type, and individual automobile "no-fault" medical payment contracts; and

c. Medicare or other governmental benefits, except as provided in Subsection R590-131-3.E.4.f. below. That part of the definition of plan may be limited to the hospital, medical, and surgical benefits of the governmental program.

4. Plan may not include:

a. hospital indemnity coverage;

b. disability income protection coverage;

c. accident only coverage;

d. specified disease or specified accident coverage;

e. nursing home and long-term care coverage;

f. a state plan under Medicaid, and may not include a law or plan when, by state or federal law, its benefits are in excess of those of any private insurance plan or other non-governmental plan; and

g. Medicare supplement policies.

[F]G. Primary Plan. A primary plan is a plan whose benefits for a person's health care coverage must be determined ~~[without taking the existence of any other plan into consideration]~~ first according to R590-131-4 B. There may be more than one primary plan, for example, two plans which have no order of benefit determination rules. A plan is a primary plan if either of the following conditions is true:

1. the plan has no order of benefit determination;

2. all plans which cover the person use the order of benefit determination provisions of this rule and under those requirements the plan determines its benefits first.

[G]H. Secondary Plan. A secondary plan is one which is not a primary plan. ~~[A COBRA or state extension of benefits plan which covers a person as a former employee, a dependent of a former employee, or a former dependent of an employee is a secondary plan.]~~ If a person is covered by more than one secondary plan, the order of benefit determination rules of this rule decides the order in which their benefits are determined in relation to each other. The benefits of each secondary plan may take into consideration the benefits of the primary plan or plans and the benefits of any other plan, which, under the provisions of this rule, has its benefits determined before those of that secondary plan.

R590-131-4. Rules for Coordination of Benefits.

A. General Rules:

1. The primary plan must pay or provide its benefits as if the secondary plans or plan did not exist. A plan that does not include a coordination of benefits provision may not take the benefits of another plan into account when it determines its benefits.

2. A secondary plan may take the benefits of another plan into account only when, under these rules, it is secondary to that other plan.

B. Determining Order of Benefits. Each plan determines its order of benefits using the first of the following rules which applies:

1. The benefits of the plan which covers the person as an employee, member or subscriber, that is, other than as a dependent, are determined before those of the plan which covers the person as a dependent.

2. Dependent Child/Parents Not Separated or Divorced. The rules for the order of benefits for a dependent child when the parents are not separated or divorced are as follows.

a. The benefits of the plan of the parent whose birthday falls earlier in the calendar year are determined before those of the plan of the parent whose birthday falls later in the year.

b. If both parents have the same birthday, the benefits of the plan which covered the parent longer are determined before those of the plan which covered the other parent for a shorter period of time.

c. If the other plan, R590-131-3.E.3.b., does not have the rule described in R590-131-4.B.1., .2 and .3, but instead has a rule based upon ~~[the gender of the parent]~~ another order, and if, as a result, the coordinating plans do not agree on the order of benefits, the rule ~~[based upon the gender of the parent]~~ of the noncomplying plan will determine the order of benefits.

The word "birthday" refers only to month and day in a calendar year, not the year in which the person was born.

A contract which includes COB and which is issued or renewed, or which has an anniversary date on or after January 1, 1986 shall include the substance of the provisions in Subsections R590-131-4.B.1., .2, and .3 of this rule.

3. Dependent Child/Separated or Divorced Parents. If two or more plans cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in ~~[this]~~ the following order:

a. first, the plan of the parent with custody of the child;

b. then, the plan of the spouse of the parent with custody of the child; and

c. finally, the plan of the parent not having custody of the child.

i. If the specific terms of a court decree state that one of the parents is responsible for the child's health care expenses ~~[of the child, and the entity obligated to pay or provide the benefits of]~~ or health insurance coverage, and the plan of that parent has actual knowledge of those terms, ~~[the benefits of that plan are determined first. The plan of the other parent shall be the secondary plan. This paragraph does]~~ that plan is primary. If the parent with financial responsibility has no coverage for the child's health care services or expenses, but that parent's spouse does, the spouse's plan is primary. This subparagraph shall not apply with respect to any claim determination period or ~~[Period or]~~ plan [Year] year during which ~~[any]~~ benefits are ~~[actually]~~ paid or provided before the entity has ~~[that]~~ actual knowledge.

ii. If the specific terms of ~~[the]~~ a court decree state that the parents ~~[shall share]~~ have joint custody, without stating that one of the parents is responsible for the health care expenses ~~[of the child]~~ or health insurance coverage of the child and the child's residency is split between the parents, the order of benefit determination rules outlined in Subsection R590-131-~~[4.B.2;]~~ 4 B.2. Dependent Child/Parents Not Separated or Divorced ~~[, shall apply.]~~ shall apply. This subparagraph shall not apply with respect to any claim determination period or plan year during which benefits are paid or provided before the entity has actual knowledge.

d. If the parents are not married or are separated, whether or not they ever were married, or are divorced, and there is no court decree allocating responsibility for the child's health care services

or expenses, the order of benefit determination among the plans of the parents and the parents' spouses, if any, is:

- i the plan of the custodial parent;
- ii the plan of the spouse of the custodial parent;
- iii the plan of the noncustodial parent; and then
- iv the plan of the spouse of the noncustodial parent.

4. Active/Inactive Employee. The benefits of a plan which covers a person as an employee who is neither laid off nor retired, or as that employee's dependent are determined before those of a plan which covers that person as a laid off or retired employee, or as that employee's dependent. If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, this provision is ignored.

5. Longer/Shorter Length of Coverage. If none of the above rules determines the order of benefits, the benefits of the plan which covered an employee, member or subscriber longer are determined before those of the plan which covered that person for the shorter term.

a. To determine the length of time a person has been covered under a plan, two plans shall be treated as one if the claimant was eligible under the second within 24 hours after the first ended.

b. The start of a new plan does not include:

- i. a change in the amount or scope of a plan's benefits;
- ii. a change in the entity which pays, provides or administers the plan's benefits; or
- iii. a change from one type of plan to another, such as, from a single employer plan to that of a multiple employer plan.

c. The claimant's length of time covered under a plan is measured from the claimant's first date of coverage under that plan. If that date is not readily available, the date the claimant first became a member of the group shall be used as the date from which to determine the length of time the claimant's coverage under the present plan has been in force.

R590-131-5. Procedure to be Followed by Secondary Plan.

A. When it is determined, pursuant to Section R590-131-4 that the plan is a secondary plan, benefits may be reduced as follows:

[A:]1. when one of the plans has contracted for discounted provider fees, the secondary plan may limit payment to any copayments and deductibles owed by the insured after payment by the primary plan; or

[B:]2. if none of the plans ~~has~~ have contracted for discounted provider fees, the secondary plan may reduce its benefits so that total benefits paid or provided by all plans for a covered service are not more than the highest allowable expense of any of the plans for that service.

[C:]B. The secondary plan must calculate the amount of benefits it would normally pay in the absence of coordination, and apply that amount to unpaid covered charges owed by the insured member after benefits have been paid by the primary plan. This amount must include deductibles and copays left owing by the insured member. The secondary plan can use its own deductibles and copays to figure the amount it would have paid in the absence of coordination, and a secondary plan is not required to pay a higher amount than what they would have paid in the absence of coordination. A secondary plan shall only apply its own deductibles and copays to the total allowable expenses, not to the amount left owing after payment by any primary plans.

C. ~~[nothing]~~Nothing in this rule is intended to require a secondary plan to make payment for any service that is not covered as a benefit by the secondary plan.

R590-131-6. Miscellaneous Provisions.

A. Reasonable Cash Value of Services. A secondary plan which provides benefits in the form of services may recover the reasonable cash value of providing the services from the primary plan, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan. Nothing in this provision may be interpreted to require a plan to reimburse a covered person in cash for the value of services provided by a plan which provides benefits in the form of services.

B. Excess and Other Nonconforming Provisions.

1. No policy, or plan as defined by this rule, may contain a provision that its benefits are "excess" or "always secondary" to any other plan or policy. However, a COBRA or state extension of benefits plan which covers a person as a former employee, a dependent of a former employee, or a former dependent of an employee is a secondary plan.

2. A plan with order of benefit determination rules which comply with this rule, which is called a complying plan, may coordinate its benefits with a plan which is "excess" or "always secondary" or which uses order of benefit determination rules which are inconsistent with those contained in this rule, which is called a noncomplying plan, on the following basis:

a. if the complying plan is the primary plan, it shall pay or provide its benefits on a primary basis;

b. if the complying plan is the secondary plan, it shall pay or provide its benefits first, but the amount of the benefits payable shall be determined as if the complying plan were the secondary plan. In such a situation, such payment shall be the limit of the complying plan's liability; and

c. if the noncomplying plan does not provide the information needed by the complying plan to determine its benefits within a reasonable time after it is requested to do so, the complying plan shall assume that the benefits of the noncomplying plan are identical to its own, and shall pay its benefits accordingly. However, the complying plan shall adjust any payments it makes based on such assumption whenever information becomes available as to the actual benefits of the noncomplying plan.

3. If the noncomplying plan reduces its benefits so that the employee, subscriber, or member receives less in benefits than he or she would have received had the complying plan paid or provided its benefits as the secondary plan and the noncomplying plan paid or provided its benefits as the primary plan and governing state law allows the right of subrogation set forth below, then the complying plan shall advance to or on behalf of the employee, subscriber, or member an amount equal to such difference.

In no event may the complying plan advance more than the complying plan would have paid had it been the primary plan, less any amount it previously paid. In consideration of such advance, the complying plan shall be subrogated to all rights of the employee, subscriber, or member against the noncomplying plan.

C. Allowable Expense. A term such as "usual and customary," "usual and prevailing," or "reasonable and customary," may be substituted for the term "necessary, reasonable and customary." Terms such as "medical care" or "dental care" may be

substituted for "health care" to describe the coverages to which the COB provisions apply.

D. Subrogation. The COB concept clearly differs from that of subrogation. Provisions for one may be included in health care benefits contracts without compelling the inclusion or exclusion of the other.

E. Right To Receive and Release Needed Information. Certain facts are needed to apply these COB rules. An insurer has the right to decide which facts it needs. It may get needed facts from or give them to any other organization or person. An insurer need not tell, or get the consent of, any person to do this. Each person claiming benefits under a plan shall give the insurer any facts it needs to pay the claim.

F. Facility of Payment. A payment made under another plan may include an amount which should have been paid under the plan. If it does, the insurer may pay that amount to the organization which made that payment. That amount will then be treated as though it were a benefit paid under the plan. The insurer will not have to pay that amount again. The term "payment made" includes providing benefits in the form of services, in which case "payment made" means reasonable cash value of the benefits provided in the form of services.

G. Right of Recovery. If the amount of the payments made by an insurer is more than it should have paid under the provisions of this rule, it may recover the excess from one or more of the following:

1. The insurer may recover from the persons it has paid or for whom it has paid[?]. However, reversals of payments made due to issues related to coordination of benefits are limited to a time period of 120 days from the date a payment is made unless the reversal is due to fraudulent acts, fraudulent statements, or material misrepresentation by an insured. It is the insurers responsibility to collect the payment from the other carriers and not the providers of service, the insured or both. Agreements between carriers regarding coordination of benefits that do not involve an insured, other than notification to an insured regarding the order of coordination for future charges, are not subject to a time limit.

2. The insurer may recover from insurance companies[?], or

3. The insurer may recover from other organizations.

[4-]H. The "amount of the payments made" includes the reasonable cash value of any benefits provided in the form of services.

[H-]I. A plan, whether primary or secondary, may not be required to pay a greater total benefit than would have been required had there been no other plan.

[H-]J. A plan may include in its contract a provision to the effect that when the covered person is required by Section 41-12a-301 to have insurance in effect, the plan may exclude charges for that covered person up to the minimum coverage required by Sections 31A-22-306 through 309 before calculating benefits payable, whether or not such coverage is in effect.

K. If the plans cannot agree on the order of benefits within 30 calendar days after the plans have received all of the information needed to pay the claim, the plans shall immediately pay the claim in equal shares and determine their relative liabilities following payment, except that no plan shall be required to pay more than it would have paid had it been primary.

R590-131-7. Penalties.

Any insurer which fails to comply with the provisions of this rule shall be subject to the forfeiture and penalty provisions of Section 31A-2-308.

R590-131-8. Separability.

If any provision of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the rule and the application of any provision to other persons or circumstances may not be affected.

R590-131-9. Existing Contracts.

A. This rule is applicable to group contract which provides health care benefits and is issued on or after the effective date.

B. Contracts issued prior to the effective date of this rule shall be brought into compliance with this rule on the next anniversary date of the contract if benefits or premiums are changed.

KEY: insurance law

~~[April 1, 1995]~~2000

Notice of Continuation December 3, 1997

31A-2-201

31A-21-307



Insurance, Administration

R590-153

Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 22641

FILED: 02/01/2000, 15:21

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The original reason for the change was to include a definition for the term "Official Trade Association Publication," which was used in the rule. Other clarifying changes were included.

SUMMARY OF THE RULE OR CHANGE: 1) "Official Trade Association Publication" is being defined; 2) the term "organization" is being replaced by "agency," and Title 19 replaced with "19a" as a result of code changes; 3) the total cost of meals increased from \$50 to \$75, and the value of flowers or gift for family members increased from \$25 to \$50; 4) the rule now includes reference to advertising on the web.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-23-302

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Since the changes in this rule are a matter of clarification and housekeeping they will not require

additional work on the part of department staff or require title insurers to change their policy forms, which would then require them to file the changes with the department along with a filing fee.

❖LOCAL GOVERNMENTS: This rule will not affect local government. The rule is regulated by a state government agency to which all fees are paid by its licensees.

❖OTHER PERSONS: The rule raises the dollar limit on total cost of business meals that a title insurer or agency may pay out from \$50 to \$75. It also increases the value of gifts that can be given by the title agency or insurer for a family occasion from \$25 to \$50. These limits are maximum limits and are totally optional.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule raises the dollar limit on total cost of business meals that a title insurer or agency can pay out from \$50 to \$75. It also increases the value of gifts that can be given by the title agency or insurer for a family occasion from \$25 to \$50. These limits are maximum limits and are totally optional.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The substantive changes in this rule have been made to clarify how title agents and agencies may advertise and promote their business. For the most part this is already being observed by the title industry. Whether or not they pay out more for business meals is left up to them.

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

Insurance
Administration
3110 State Office Building
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at (801) 538-3803, by FAX at (801) 538-3829, or by Internet E-mail at jdmain.jwhitby@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/17/2000; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 03/08/2000, 9:00 a.m., 1112 State Office Building, Salt Lake City, UT 84114.

THIS RULE MAY BECOME EFFECTIVE ON: 03/18/2000

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-153. Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business.

R590-153-1. Authority.

This rule[~~replaces Rule R590-92. It~~] is promulgated pursuant to Section 31A-2-201(3)(a),[~~Utah Code~~] in which the Commissioner is empowered to make rules to implement the Insurance Code, and pursuant to the specific authority of Section 31A-23-302(8),[~~Utah Code~~] which authorizes the Commissioner

to define unfair methods of competition or any other unfair or deceptive act or practice in the business of insurance.

R590-153-2. Purpose.

The purpose of this rule is to identify certain practices which the commissioner finds provide unfair inducements for the placement of title insurance business and as such constitute unfair methods of competition.

R590-153-3. Scope.

This Rule applies to all title insurers, title insurance [organizations]agencies and title insurance agents and all employees, representatives and any other party working for or on behalf of said entities whether as a full time or part time employee or as an independent contractor.

R590-153-4. Definitions.

For the purpose of this Rule the commissioner adopts the definitions as set forth in Section 31A-1-301,[~~Utah Code~~] and the following:

A. "Producer of title business" means any person engaged in a business, profession or occupation of:

- (1) buying or selling interests in real property;
- (2) making loans secured by interests in real property; and
- (3) shall include but not be limited to real estate agents, real estate brokers, mortgage brokers, lending or financial institutions, builders, developers, [subdividers]sub-dividers, attorneys, consumers and the employees, agents, representatives, or solicitors of any of the foregoing.

B. "Discount" means the furnishing or offering to furnish title insurance, services constituting the business of title insurance or escrow services for a total charge less than the amounts set forth in the applicable rate schedules filed pursuant to Section 31A-[19]19a-203 or 31A-[19]19a-209,[~~Utah Code~~].

C. "Trade Association" means a recognized association of persons, a majority of whom are producers of title insurance business or persons whose primary activity involves real property.

D. "Business meals" shall include drinks and tips.

E. "Official Trade Association Publication" means:

(1) a membership directory, provided its exclusive purpose is that of providing the distribution of an annual roster of the association's members to the membership and other interested parties; or

(2) an annual, semi-annual, quarterly or monthly publication containing information and topical material for the benefit of the members of the association.

R590-153-5. Unfair Methods of Competition, Acts and Practices.

The commissioner finds that providing or offering to provide any of the following benefits by parties identified in Section R590-153-3 to any producer of title insurance, either directly or indirectly, except as specifically allowed in Section R590-153-6 below, is a material and unfair inducement to obtaining title insurance business and constitutes an unfair method of competition in the business of title insurance prohibited under Section 31A-23-302:

A. The furnishing of a commitment to provide title insurance without charge or at a charge discounted from an applicable rate filing. The prima facie cost of producing a commitment to insure

shall be 60% of the minimum rate filed by the insurance company in the absence of a cost supported rate filing either higher or lower.

B. The paying of any charges for the cancellation of an existing title insurance commitment issued by a competing organization, unless that commitment discloses a defect which gives rise to a claim on an existing policy.

C. Furnishing escrow services pursuant to Section 31A-23-307,~~[Utah Code,]~~ for a charge less than the charge filed pursuant to Section 31A-~~[19]~~19a-209(5),~~[Utah Code]~~ or the filing of charges for escrow services with the commissioner which are less than the actual cost of providing the services.

D. Waiving all or any part of established fees or charges for services which are not the subject of rates filed with the Commissioner.

E. Deferring or waiving any payment for insurance or services otherwise due and payable, including "holding for resale".

F. Furnishing services not reasonably related to a bona fide title insurance or escrow, settlement, or closing transaction. Examples (non exclusive): computer services, non-related delivery services, accounting assistance, legal counseling.

G. The paying for, furnishing, or waiving all or any part of the rent for space occupied by any producer of title insurance business.

H. Renting space from any producer of title business, regardless of the purpose, at a rate which is excessive when compared with rents for comparable space in the same geographic area, or paying rent based in whole or in part on the volume of business generated by any producer of title insurance business.

I. Furnishing all or any part of the time or productive effort of any employee of the title insurance organization or insurer (i.e., secretary, clerk, messenger, escrow officer etc.) to any producer of title insurance business.

J. Paying for all or any part of the salary of an employee of any producer of title insurance business.

K. Paying, or offering to pay, either directly or indirectly, salary, commissions or any other consideration to any employee who is at the same time~~[actively]~~ engaged as a real estate agent or broker or as a mortgage broker.

L. Paying for the fees or charges of a professional (e.g. an appraiser, surveyor, engineer, attorney, etc.) whose services are required by any producer of title insurance business to structure or complete a particular transaction.

M. Sponsoring, cosponsoring, subsidizing, contributing fees, prizes, gifts, food or otherwise providing anything of value for an activity, except as allowed under Subsection R590-153-6(F) of a producer of title insurance business. Activities include, but are not limited to: "open houses" at homes or property for sale, meetings, breakfasts, luncheons, dinners, conventions, installation ceremonies, celebrations, outings, cocktail parties, hospitality room functions, open house celebrations, dances, fishing trips, gambling trips, sporting events of all kinds, hunting trips or outings, golf or ski tournaments, artistic performances and outings in recreation areas or entertainment areas.

N. Sponsoring, subsidizing, supplying prizes or labor, except as allowed under Subsection R590-153-6(C), or otherwise providing things of value for promotional activities of producers of title insurance business. Title agents or insurers may attend activities of producers if there is no additional cost to the agent or insurer other than their own entry fees, registration fees, meals, etc., and provided that these fees are no greater than those charged to

producers of title insurance business or others attending the function.

O. Providing gifts or anything of value to a producer of title insurance business in connection with social events such as birthdays, job promotions, etc. except as provided in Subsection R590-153-6(H). A letter or card in these instances will not be interpreted as providing a thing of value.

P. Providing either directly or indirectly, a compensating balance or deposit in a lending institution either for the express or implied purpose of influencing the placement or channeling of title insurance business by such lending institution. This does not preclude transactions with lending institutions which are in the normal course of business.

Q. Furnishing any part of a title~~[organization's]~~agency's or insurer's facilities (e.g. conference rooms, meeting rooms, etc.) to a producer of title insurance business or trade association without receiving a fair rental charge comparable to other rental charges for facilities in the same geographic area.

R. Furnishing information packets, listing kits, "farm" packages or any other form of title evidence without first filing a specimen form copy with the commissioner and specifying a rate for which the form is available. The rate may not be less than the actual cost of producing the information and the material furnished.

S. Paying for any advertising on behalf of a producer of title insurance business.

T. Advertising jointly with a producer of title insurance business on subdivision or condominium project signs, or signs for the sale of a lot or lots in a subdivision or units in a condominium project. A title insurance ~~[organization]~~agency or company may advertise independently that it has provided title insurance for a particular subdivision, condominium project etc., but may not indicate that all future title insurance will be written by that agency or through that company.

U. A direct or indirect benefit provided to a producer of title insurance which is not specified in Section R590-153-6 below, will be investigated by the insurance department for the purpose of determining whether it should be defined by the commissioner as an unfair inducement under Section 31A-23-302(8),~~[Utah Code Annotated]~~.

R590-153-6. Permitted Advertising and Business Entertainment.

A. A title ~~[organization]~~agency, agent or insurer may furnish without charge a copy of any existing plat map, and tax information covering a specific parcel of real estate, (Tax identification number, assessed owner, assessed value of land and improvements and the latest tax amount) without additions or addenda or attachments which may be construed as reaching conclusions of the ~~[organization]~~agency, insurer or agent regarding matters of marketable ownership or encumbrances.

B. Advertisements ~~[in official trade association publications are permissible as long as any organization or title insurer has an equal opportunity to advertise in the publication and at the standard rates other advertisers in the publication are charged.]~~by title agencies or companies must comply with the following:

(1) The advertisement must be purely self-promotional.

~~[No advertisement]~~(2) Advertisements may not be placed in a publication, including an internet web page, that is hosted, published~~[or]~~, produced for, distributed by~~[:]~~ or on behalf of a

producer or group of producers of title insurance business except as allowed under R590-153-6 (B)(3).

(3) Advertisements in official trade association publications are permissible as long as any agency or title insurer has an equal opportunity to advertise in the publication and at the standard rates other advertisers in the publication are charged.

C. A title [organization]agency, insurer or agent may donate time to serve on a trade association committee and may also serve as an officer for the trade association.

D. A title [organization]agency or insurer may have two self-promotional open houses per calendar year for each of its owned or occupied facilities, (including branch offices) (e.g. a Christmas party, an open house for remodeling of its facility, an open house for a new facility for the organization). The [organization]agency or insurer may not expend more than \$10.00 per guest per open house. The open house may take place on or off the [organization's]agency's or insurer's premises[;] but may not take place on the producer's premises.

E. A title [organization]agency or insurer may distribute self-promotional items having a value of \$3 or less to producers of title insurance business, consumers and members of the general public. These self-promotional items shall be novelty gifts which are nonedible and may not be personalized or bear the name of the donee. Self-promotional items may only be distributed in the regular course of business. Self-promotional items may not be given to producers of title insurance business or trade associations for redistribution by these entities.

F. A title [organization]agency or insurer may make expenditures for business meals or activities on behalf of any person, whether a producer of title insurance or not as a method of advertising if the expenditure meets all the following criteria:

(1) The agent representing the title [organization]agency or an employee of the insurer must be present during the business meal or activity.

(2) There is a substantial title insurance business discussion directly before, during or after the business meal or activity.

(3) The total cost of the business meal and the activity is not more than ~~[\$50.00]~~\$75.00 per person, per day.

(4) No more than three individuals from an office of a producer of title insurance business may be provided a business meal or activity by an [organization]agency or insurer in a single day.

(5) The entire business meal or activity may take place on or off the [organization's]agency's or insurer's premises, but may not take place on the producer's premises.

G. A title [organization]agency or insurer may conduct educational programs under the following conditions:

(1) The educational program shall address only title insurance, escrow or topics directly related thereto.

(2) The educational program must be of at least one hour duration.

(3) For each hour of education \$10 or less per person may be expended, including the cost of meals and refreshments.

(4) No more than one such educational program may be conducted at the office of a producer of title insurance business per calendar quarter.

H. A title [organization]agency or insurer may acknowledge a wedding, birth or adoption of a child, or funeral of a producer of

title insurance business or members of his/her immediate family with flowers or gifts not to exceed ~~[\$25.00]~~\$50.00.

I. Any other advertising and/or business entertainment must be requested in writing and approved in advance and in writing by the commissioner.

R590-153-7. Penalties.

Subject to the provisions of the Utah Administrative Procedures Act, violators of this rule shall be subject to forfeitures, suspension or revocation of their insurance license or Certificate of Authority, and/or any other penalties or measures as are determined by the commissioner in accordance with law.

R590-153-8. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance

~~[May 19, 1995]~~2000

Notice of Continuation December 15, 1997

31A-2-201

31A-23-302



Natural Resources, Parks and Recreation
R651-205
Zoned Waters

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 22613

FILED: 01/15/2000, 11:38

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To better identify areas at Pineview Reservoir that have restricted use of motors, except electric motors, and to correct the names of areas affected by this rule. The use of a vessel on Bear Lake from July 1 to Labor Day in the area adjacent to Cisco Beach has become a safety issue for scuba divers. Therefore, in order to protect scuba divers from surfacing under or near a vessel, starting at the entrance station for approximately 1/4-mile south, vessels will be prohibited. From that point on, appropriate buoys mark the vessel area. Both requested rule changes were approved in public meetings by the Utah Boating Advisory Council and the Board of Parks and Recreation.

SUMMARY OF THE RULE OR CHANGE: This rule will add areas where the use of motors, except electric motors, is prohibited to promote safety of the public at Pineview Reservoir. Those areas would be Geersten Bay and Middle Fork of the Ogden River. This amendment also changes the name "Bluffs

swim" to "Cemetery Point" where vessels are prohibited. This change was requested by the U.S. Forest Service. At Bear Lake vessels are to be prohibited from July 1 through Labor Day in the area adjacent to Cisco Beach starting at the entrance station and extending approximately 1/4-mile south. This area is then marked with appropriate buoys. This change was requested by the park manager to protect scuba divers using the area. Both requested rule changes were approved in public meetings by the Utah Boating Advisory Council and the Board of Parks and Recreation.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-11-17

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: State revenue will not be affected. State parks will need to expend approximately \$900 to purchase buoys to mark the Cisco Beach area. The U.S. Forest Service will purchase buoys to mark the areas at Pineview.

❖LOCAL GOVERNMENTS: Since local government has no authority over state parks, there is no aggregate anticipated cost or savings.

❖OTHER PERSONS: Boaters will need to adhere to the restrictions after the areas are properly marked and designated. Scuba divers will not need to worry about surfacing in close proximity to a boat. If boaters fail to adhere to these restrictions, a Class B misdemeanor and fine placed on such individuals will be determined by a judge. The fine could range up to \$1,000 per occurrence.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The U.S. Forest Service will need to purchase buoys to mark the areas they requested to be zoned on Pineview. The numbers will be determined by need, which might range from 10 to 12 or more at a cost of \$80 per buoy.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule will have no fiscal impact on business.

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

Natural Resources
Parks and Recreation
116
1594 West North Temple
PO Box 146001
Salt Lake City, UT 84114-6001, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at (801) 538-7320, by FAX at (801) 537-3144, or by Internet E-mail at nrdomain.dguess@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/16/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2000

AUTHORIZED BY: David K. Morrow, Deputy Director

R651. Natural Resources, Parks and Recreation.

R651-205. Zoned Waters.

R651-205-1. Obeying Zoned Waters.

The operator of a vessel shall obey zoned water requirements or restrictions.

R651-205-2. Deer Creek Reservoir.

Vessels and all other water activities are prohibited within 1500 feet of the dam. No water skiing in Wallsberg Bay.

R651-205-3. Green River.

The use of motors is prohibited between the Flaming Gorge Dam and the confluence with Red Creek.

R651-205-4. Stansbury Park Lake.

The use of vessels over 20 feet in length and motors, except electric trolling motors, is prohibited.

R651-205-5. Lower Provo River.

The section from where it enters into Utah Lake upstream to the gas pipeline is designated as a wakeless speed area, and the use of motors is prohibited upstream from this point.

R651-205-6. Decker Lake.

The use of motors is prohibited.

R651-205-7. Palisade Lake.

The use of motors is prohibited.

R651-205-8. Ivins Reservoir.

The use of motors whose manufacture listed horsepower is 10 horsepower or more is prohibited.

R651-205-9. Jordan River.

The use of motors is prohibited.

R651-205-10. Ken's Lake.

The use of motors, except electric trolling motors, is prohibited.

R651-205-11. Pineview Reservoir.

The use of motors, except electric motors, is prohibited in the designated area in the North Arm, North Geersten Bay and the Middle Fork of the Ogden River. Vessels are prohibited in the Middle Inlet and ~~[Bluffs swim]~~ Cemetery Point picnic areas.

R651-205-12. Jordanelle Reservoir.

The use of motorboats or sailboats is prohibited in the designated area of Hailstone Beach.

R651-205-13. Little Dell Reservoir.

The use of motors is prohibited.

R651-205-14. Bear Lake.

The use of a vessel is prohibited from July 1 through Labor Day in the area adjacent to Cisco Beach starting at the entrance

station and extending approximately 1/4 mile south, when this area is marked with appropriate buoys.

KEY: boating
[May 31, 1995] March 17, 2000 73-18-4(3)
Notice of Continuation May 12, 1997



School and Institutional Trust Lands,
Administration
R850-11
Procurement

NOTICE OF PROPOSED RULE
(Repeal and reenact)
DAR FILE NO.: 22618
FILED: 01/24/2000, 11:56
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed and reenacted in order to clarify the Trust Lands Administration's statutory exemption from the Utah Procurement Code and to set forth agency procurement rules and policies in a single location, replacing former rules and board policies that were internally inconsistent.

SUMMARY OF THE RULE OR CHANGE: The proposed rule broadens the agency's exemption from the Utah Procurement Code (UPC) to all agency procurements (Section R850-11-150). The rule eliminates the requirement that service providers submit a statement of qualifications before bidding (Section R850-11-300). It reduces the number of required bidders from three to two on projects of less than \$20,000, in accordance with the UPC (Section R850-11-400), and adds requirements for a written request for proposals (RFP) for projects in excess of \$20,000 (Section R850-11-450). The former rules also permit selection of other than a low bidder where the agency finds that the high bidder is more desirable. The new rule continues to allow sole source procurements (Section R850-11-500). The new rule adds provisions concerning the exemption of debt and equity investments from the UPC (Section R850-11-700), conflicts of interest (Section R850-11-1000), and appeals (Section R850-11-1100).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53C-1-201(3)(a)(iv)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Cost savings to state government are unknown. The proposed rule will increase the efficiency of agency procurements, with a concomitant decrease in staff time and costs, but it is not possible to accurately estimate exact cost savings.

❖LOCAL GOVERNMENTS: There will be no cost savings or cost increases to local governments because the proposed rule does not affect them.

❖OTHER PERSONS: It is anticipated that there could be a savings due to the elimination of the previous prequalification requirement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This new rule eliminates the prequalification requirement, which should reduce outside compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should reduce outside compliance costs due to the elimination of the previously required prequalification of service providers.

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

School and Institutional Trust Lands
Administration
Suite 500
675 East 500 South
Salt Lake City, UT 84102-2818, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

John Andrews at the above address, by phone at (801) 538-5180, by FAX at (801) 355-0922, or by Internet E-mail at jandrews.tlmain@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/16/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2000

AUTHORIZED BY: John Andrews, Attorney

R850. School and Institutional Trust Lands, Administration.

~~**R850-11. Procurement.**~~

~~**R850-11-100. Authorities:**~~

~~— This rule is authorized by Sections 6, 8, 10, and 12 of the Utah Enabling Act; Articles X and XX of the Utah Constitution, and Section 53C-1-201(3)(a)(iv).~~

~~**R850-11-150. Purposes:**~~

~~— This rule provides procedures to be followed only when procuring services directly related to the management, development, or sale of trust lands. All other goods and services must be procured pursuant to the Utah Procurement Code.~~

~~**R850-11-200. Definitions:**~~

~~— For the purposes of this rule:~~

~~1. Service Provider: individual or firm engaged in the business of providing services directly related to the management, development or sale of trust lands.~~

~~2. Services: any professional services directly related to the management, development or sale of trust lands, including engineering, construction, architectural, survey, appraisal, real estate brokerage, planning, or such other services as needed.~~

R850-11-300. Prequalification of Service Providers.

— 1. The agency shall request service providers to at least annually submit a statement of qualifications and performance data including the following:

— (a) The name of the service provider and location of all offices, specifically indicating the principal place of business.

— (b) The type of services provided.

— (c) Proof of the legal ability to do business in Utah, as evidenced by possessing appropriate permits, licenses, or any other documents required by state law.

— (d) The number of years the service provider has been in business and the average number of employees over the past five years.

— (e) The education, training, and qualifications of the principals and key employees.

— (f) A description of the service provider's professional experience.

— (g) The names of five clients who may be contacted, including the names of at least three clients for whom the service provider has worked within the past year.

— (h) If appropriate, an hourly fee schedule.

— (i) The areas of the state in which the service provider would prefer to work.

— (j) Financial information for certain types of service providers as determined by the agency.

— 2. At least once annually, the agency will advertise statewide its intent to accept statements of qualifications, however, instructions detailing required information and procedures will be available at any time upon request.

— 3. The purpose of prequalification is to provide the agency with basic information regarding service providers. Prequalification does not guarantee that a service provider will be solicited for bids, however, in all instances except those described in R850-11-400(2), (3), and (4), or if the agency determines that it is in the best interests of the trust, service providers who have not been prequalified may not be considered.

— 4. Prequalification is not necessary for appraisers licensed by the State of Utah; archaeologists certified by the State Historic Preservation Officer; paleontologists certified by the State Paleontologist; or real estate brokers licensed by the State of Utah.

R850-11-400. Bidding Procedures.

— 1. In instances where bids are required, the agency must contact at least three service providers when soliciting bids or proposals.

— (a) No bids are required for procurements under \$2,000.

— (b) Bids for services that will cost under \$10,000 may be solicited and received via telephone.

— (c) Bids for services costing \$10,000 or more must be solicited in writing, but may be transmitted and received via facsimile.

— 2. If there are not three providers prequalified for a particular service, the agency may solicit bids from less than three providers. If the agency deems it to be in the best interests of the trust, the agency may solicit additional bids from providers of that service who are not prequalified.

— 3. Unanticipated Services: the agency may from time to time require services that were not anticipated during the prequalification period. In that case, the agency may solicit bids from service

providers who are not prequalified, if the agency determines that such services are in the best interests of the trust and consistent with the agency's fiduciary obligations.

— 4. Where the agency has identified a provider that has special familiarity with a project or has previously worked on a related project, the agency may hire the provider without soliciting bids from other providers if it finds that hiring the particular provider is in the best interests of the trust and that the provider's fee is reasonable.

R850-11-450. Real Estate Brokerage Services.

— 1. The agency is not required to solicit bids for real estate brokerage services.

— 2. Where the agency has not listed a property with a broker, but has undertaken internal marketing efforts, the agency is authorized to pay a commission no greater than the prevailing market rates in the area to real estate brokers who are the procuring cause of:

— (a) the sale of trust lands, or

— (b) a development transaction entered into by the agency pursuant to R850-140, provided that the broker has registered the client in compliance with agency procedures.

— Commission amounts will be determined by the agency based on type of transaction, prevailing market conditions, and any other relevant factors.

R850-11-500. Selection Criteria for Awarding Contracts.

— 1. In reviewing bids, the agency must consider the following criteria:

— (a) Responsiveness: whether the bid or proposal is responsive to the agency's bid request. In evaluating responsiveness, the agency may consider whether:

— i) the bid provides a detailed explanation of the work the provider will perform in completing the requested service(s);

— ii) the bid demonstrates that the provider has adequate knowledge and expertise to perform the requested service(s);

— iii) in the judgment of the agency, the provider can adequately perform the requested service(s) within the stated bid price.

— (b) Reputation: whether the provider has a professional reputation consistent with the ability and willingness to perform the service(s) competently and efficiently. In evaluating reputation, the agency may consider:

— i) whether information provided at the time of prequalification indicates that the provider has a good professional reputation;

— ii) whether the provider has a good professional reputation within its field and within its community based on the agency's inquiry and research;

— iii) any previous agency experience with the provider.

— (c) Experience: whether the provider has sufficient professional experience to perform the service(s) competently and efficiently. In evaluating experience, the agency may consider whether:

— i) the provider has worked on similar projects;

— ii) the provider has unique familiarity with the specific project.

— (d) Resources: whether the provider has adequate staff and resources to complete the requested service(s) within the stated bid.

— 2. The agency will award the contract to the lowest bidder unless the agency finds that, based on the criteria listed above or

other compelling reasons, it is in the best interest of the trust and consistent with the agency's fiduciary obligations to select another provider. If the agency does not award the contract to the lowest bidder, it must issue a written finding detailing its reasons for doing so:

R850-11-600. Documentation.

The agency will determine, based on the type of service requested and complexity of the project, the documentation necessary in order to adequately protect the best interests of the trust. Formal contract documentation shall be subject to approval by a representative of the attorney general's office:

R850-11-700. Bonding for Construction Services.

1. For construction services costing \$50,000 or higher, the agency shall require the chosen provider to deliver to the agency a performance bond and a payment bond in amounts equal to 100% of the price specified in the contract and executed by a surety company authorized to do business in this state or in any other form satisfactory to the agency;

2. For construction services costing less than \$50,000, the agency may require a performance bond and a payment bond as described in R850-11-700(1) if it determines that requiring such bonds is in the best interests of the trust.

KEY: government purchasing

June 3, 1997

53C-1-201(3)(a)(iv)]

R850-11. Procurement.

R850-11-100. Authorities.

This rule is authorized by Sections 6, 8, 10, and 12 of the Utah Enabling Act; Articles X and XX of the Utah Constitution, and Section 53C-1-201(3)(a)(iv).

R850-11-150. Purposes.

Section 53C-1-201(3)(a)(iv) permits the agency to be exempted from the Utah Procurement Code upon board approval and adoption of alternative procurement procedures. This rule provides alternative procurement procedures that the agency may follow when procuring any goods and services related to the administration of the agency or the management, development, leasing or sale of trust lands. Nothing in this rule shall be deemed to prevent the agency from procuring goods and services pursuant to the Utah Procurement Code or other applicable law whenever deemed advisable by the agency, or in circumstances where this rule is not applicable.

R850-11-200. Definitions.

For the purposes of this rule:

1. Provider: means an individual or firm engaged in the business of providing goods or services deemed necessary by the agency.

2. Services: any professional services related to the administration of the agency or the management, development, leasing or sale of trust lands, including management consulting, legal, engineering, construction, environmental, geological, mining engineering, architectural, survey, appraisal, real estate brokerage, planning, or such other services as needed.

R850-11-300. Statements of Qualification by Providers.

1. The agency may from time to time request providers to submit a statement of qualifications containing information that the agency deems relevant to the provider's ability to provide quality goods or services. At least once annually, the agency will advertise statewide its intent to accept statements of qualifications, and will maintain a log of providers who have submitted statements of qualifications for particular goods or services.

2. The purpose of prequalification is to provide the agency with basic information regarding providers for the agency's convenience. The agency is not required to solicit each or any prequalified provider for a particular good or service when it undertakes a procurement.

R850-11-400. Bidding Procedures - Small Procurements.

1. Competitive bids are not required for procurements under \$2,000 unless the responsible agency staff member believes that the potential financial benefit to the trust beneficiaries from obtaining bids outweighs the staff time and costs associated with soliciting bids.

2. For procurements over \$2,000 and less than \$20,000, the responsible agency staff member shall seek to obtain no less than two competitive bids. Bids may be solicited and received by telephone, but shall be noted in writing by the responsible agency staff member.

3. The provider offering the lowest bid shall be selected unless the director or responsible assistant director makes a written determination that a provider submitting a higher bid is better qualified to provide the particular services being procured by the agency.

4. Nothing in this rule shall prevent the agency from using existing statewide contracts for supplies, services and construction as set forth in R33-3-301(2).

R850-11-450. Bidding Procedures - Large Contracts.

1. For procurements of services anticipated to exceed \$20,000, the agency shall prepare a written request for proposals (RFP) or invitation to bid describing information required by the agency in evaluating the proposal, which may include a description of the services required, a statement of the provider's experience and qualifications, any performance schedule or deadlines, billing rates, bid specifications, and other information relevant to the particular project.

2. The responsible agency staff member shall seek to obtain at least three written responses to the RFP. Consideration shall be given to publishing the RFP in a newspaper of general circulation or otherwise advertising the RFP to elicit additional responses from potential providers.

3. The provider offering the lowest bid shall be selected unless the director or the responsible assistant director makes a written determination, supported by detailed reasons, that a provider submitting a higher bid is better qualified to provide the particular services being procured by the agency.

4. For contracts involving the provision of services where the scope or duration of the services have not been determined at the time of procurement, the agency shall select the provider offering, as determined in the discretion of the director or the responsible assistant director, the best combination of price, expertise, and other

relevant factors. The director or the responsible assistant director shall make a written determination, supported by detailed reasons, that the selected provider is best qualified to provide the particular services being procured by the agency.

5. For all procurements of construction anticipated to exceed \$50,000, the agency shall consult with the Division of Purchasing in advance of public dissemination of the RFP or bid documents.

R850-11-500. Sole Source Procurements.

Where the agency has identified a provider that has special familiarity or qualifications with respect to a project, or that has previously worked on a related project, the agency may hire the provider without soliciting bids from other providers if the director or responsible assistant director finds in writing that hiring the particular provider is in the best interests of the trust beneficiaries, and that the provider's fee is reasonable.

R850-11-600. Real Estate Brokerage Services.

1. The agency is not required to solicit bids for real estate brokerage services, and may list trust lands with a licensed Utah broker as it sees fit.

2. Where the agency has not listed a property with a broker, but has undertaken internal marketing efforts, the agency is authorized but not obligated to pay a commission or finder's fee no greater than the prevailing market rates in the area to real estate brokers who have previously registered their client as directed by the agency, and who are the procuring cause of:

(a) the sale of trust lands; or

(b) a development transaction entered into by the agency pursuant to R850-140.

3. Commission amounts will be determined in the discretion of the agency based on type of transaction, prevailing market conditions, and any other relevant factors.

R850-11-700. Debt and Equity Investments.

Debt and equity investments made by the agency shall be exempt from the Utah Procurement Code, provided that such investments are part of a development transaction approved by the board and entered into by the agency pursuant to R850-140.

R850-11-800. Documentation.

The agency will determine, based on the type of service requested and complexity of the project, the level of contractual documentation necessary in order to adequately protect the best interests of the trust. Formal contract documentation shall be subject to approval as to form by a representative of the attorney general's office.

R850-11-900. Bonding for Construction Services.

1. For construction services costing \$50,000 or higher, the agency shall require the chosen provider to deliver to the agency a performance bond and a payment bond in amounts equal to 100% of the price specified in the contract and executed by a surety company authorized to do business in this state or in any other form satisfactory to the agency;

2. For construction services costing less than \$50,000, the agency may require a performance bond and a payment bond as described in R850-11-700(1) if it determines that requiring such bonds is in the best interests of the trust.

R850-11-1000. Conflicts of Interest.

The agency shall not enter into any contract with a provider which violates or, on account of the factual circumstances or person involved, gives the appearance of a conflict of interest or a potential violation of the Utah Public Officer's and Employee's Ethics Act.

R850-11-1100. Appeals.

Appeals of agency procurement decisions shall be governed by Part H of Title 63, Chapter 56. All initial appeals shall be directed to the director of the agency, with a copy to the Director of the Division of Purchasing. The disposition of any appeal shall take into account the intended purpose of Section 53C-1-201(3)(a)(iv), which is to provide the agency with broad discretion and flexibility in procurement to facilitate businesslike management of trust lands.

KEY: government purchasing

March 17, 2000

53C-1-201(3)(a)(iv)



Tax Commission, Property Tax
R884-24P-33
 2000 Personal Property Valuation
 Guides and Schedules Pursuant to
 Utah Code Ann. Section 59-2-301

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 22627

FILED: 01/28/2000, 10:56

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-2-301 requires the county assessor to assess all property located within the county. Subsection 59-1-210(3) authorizes the State Tax Commission to promulgate rules that aide county officials in the performance of any duties relating to the assessment and equalization of property within the county. This is a technical appraisal amendment to provide direction to assessors in determining the market value of aircraft manufacturing tools and dies and canned computer software. Aircraft manufacturing tools and dies are subject to economic, functional, and physical obsolescence, and a percent good schedule was not in place which would produce reasonable market-value approximations. The part of the amendment related to canned computer software simply clarifies the methodology of determining market value.

SUMMARY OF THE RULE OR CHANGE: One part of the proposed amendments to Section R884-24P-33 creates a new percent good schedule specifically related to aircraft manufacturing tools and dies. This amendment is necessary to properly estimate market value in the assessment process for tools and dies in the aircraft manufacturing industry. The other part of the amendment indicates substitutes for acquisition

cost that a licensee must use if there is no stated acquisition cost for canned computer software.

(DAR Note: A corresponding 120-day (emergency) rule that is effective as of December 16, 1999, was published under DAR No. 22569 in the January 15, 2000, issue of the *Utah State Bulletin*.)

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

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** The amount of savings or cost to state government is undetermined. The state receives tax revenue for assessing and collecting and for the uniform school fund based on increased or decreased property valuation, including aircraft manufacturing tools and dies assessed under the Property Tax Act. The impetus for this rule amendment is that there is a significant amount of this equipment currently moving into the state. The actual increase in the state budget cannot be determined until all the equipment arrives in Utah. The state performs audits of personal property accounts at the request of counties. However, there should be no additional cost to the audit program. Therefore, it is estimated that the overall cost is minimal due to this amendment. There will be an undetermined positive impact to the state budget from the movement of this equipment into Utah. It will be dependant on the amount, type, and age of the aircraft manufacturing equipment moved to Utah. The other part of the amendment related to canned computer software is simply a technical appraisal clarification and will cause no cost or savings to the state budget.

❖**LOCAL GOVERNMENTS:** The amount of savings or cost to local government is undetermined. Local governments currently receive tax revenue from the personal property of aircraft manufacturers. Local governmental entities receive tax revenue based on increased or decreased property valuation from the disposal or acquisition of personal property. No total cost or savings could be calculated without a complete inventory of personal property tax rolls in each county, a listing of newly-acquired aircraft tools and dies during 1999, a listing of property which has been removed from personal property rolls during 1999, and a complete list of the equipment which is being moved into Utah. However, it is estimated that the overall cost or savings is minimal due to this amendment. County Assessor's offices statewide will be required to determine if property in their county should be correctly classified as aircraft manufacturing tools and dies. The determination of classification will not require extra resources since all county offices use self-assessing personal property affidavits and it will be listed on the affidavit by the taxpayer. This would only represent a change in the instructions sent with the affidavit to individual business. There should be no significant cost to the assessor's offices. The part of the amendment related to canned computer software is a clarification in determining acquisition cost to report on the personal property affidavit. This would only represent a change in the instructions sent with the affidavit to individual businesses. There should be insignificant cost to the assessor's offices.

❖**OTHER PERSONS:** Each personal property owner is required to file an annual affidavit listing personal property with the county assessor's office. The personal property owners may see a change in value, depending on ownership of the aircraft manufacturing tools and dies. Businesses that currently have this type of equipment in Utah will see a slight decrease in personal property tax liability. In addition, the compliance cost should be minimal due to the fact that this amendment is simply a line-item classification change on the personal property affidavit already filed by the taxpayers. Therefore, it is estimated that the overall compliance cost due to this amendment is minimal. The part of the amendment related to canned computer software simply explains how to determine acquisition cost under various licensing possibilities. Therefore, it is estimated that the overall compliance cost due to this amendment is minimal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Each personal property owner is required to file an annual affidavit listing personal property with the county assessor's office. The personal property owners may see a change in value, depending on ownership of the aircraft manufacturing tools and dies. Businesses that currently have this type of equipment in Utah will see a slight decrease in personal property tax liability. In addition, the compliance cost should be minimal due to the fact that this amendment is simply a line-item classification change on the personal property affidavit already filed by the taxpayers. Therefore, it is estimated that the overall compliance cost due to this amendment is minimal. The part of the amendment related to canned computer software simply explains how to determine acquisition cost under various licensing possibilities. Therefore, it is estimated that the overall compliance cost due to this amendment is minimal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As indicated above, the fiscal impact to aircraft manufacturing businesses will be a slight decrease in personal property taxes, but local and state governments may experience a slight increase in personal property tax collections due to the volume of equipment moving into the state. The fiscal impact to businesses related to the canned computer software amendment is minimal. In the aggregate, the fiscal impact is estimated to be minimal. There will be a shift in tax liability from the licensee to the licensor of canned computer software as a result of this rule.

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

Tax Commission
Property Tax
Tax Commission Building
210 North 1950 West
Salt Lake City, UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Pam Hendrickson at the above address, by phone at (801) 297-3900, by FAX at (801) 297-3919, or by Internet E-mail at phendric@tax.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/16/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2000

AUTHORIZED BY: Pam Hendrickson, Commissioner

R884. Tax Commission, Property Tax.

R884-24P. Property Tax.

R884-24P-33. 2000 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

A. Definitions.

1. "Acquisition cost" means all costs required to put an item into service, including purchase price, freight and shipping costs; installation, engineering, erection or assembly costs; and excise and sales taxes.

a) Indirect costs such as debugging, licensing fees and permits, insurance or security are not included in the acquisition cost.

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

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

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

3. "Cost new" means the manufacturer's suggested retail price or the actual cost of the property when purchased new. For property purchased used the cost new may be estimated by the taxing authority.

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

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

b) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, and vehicle valuation guides such as NADA.

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

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

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

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

4. The assessor and the Commission may rely on other publications listing costs new or market values when valuing motor

vehicles not found in the source guide recommended by the Commission.

C. Other taxable personal property that is not included in the listed classes includes:

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

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

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

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

E. All taxable personal property is classified by expected economic life as follows:

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

a) Examples of property in the class include:

- (1) barricades/warning signs;
- (2) library materials;
- (3) patterns, jigs and dies;
- (4) pots, pans, and utensils;
- (5) canned computer software;
- (6) hotel linen;
- (7) wood and pallets; and
- (8) video tapes.

b) With the exception of video tapes, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

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

(1) retail price of the canned computer software;

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

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

(e)d) Video tapes are valued at \$15.00 per tape for the first year and \$3.00 per tape thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
99	70%
98	40%
97 and prior	10%

2. Class 2 - Computer Dependent Machinery.

a) Machinery shall be classified as computer dependent machinery if all of the following conditions are met:

- (1) The equipment is sold as a single unit. If the invoice(s) break out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.
 - (2) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.
 - (3) The machine can perform multiple functions and is controlled by a programmable central processing unit.
 - (4) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.
 - (5) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.
- b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
99	87%
98	71%
97	60%
96	51%
95	44%
94	36%
93	27%
92 and prior	17%

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

a) Examples of property in this class include:

- (1) office machines;
- (2) alarm systems;
- (3) shopping carts;
- (4) ATM machines;
- (5) small equipment rentals;
- (6) rent-to-own merchandise;
- (7) telephone equipment and systems;
- (8) music systems;
- (9) vending machines; and
- (10) video game machines.

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

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
99	83%
98	67%
97	51%
96	34%
95 and prior	18%

4. Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

a) Examples of property in this class include:

- (1) furniture;
- (2) bars and sinks;
- (3) booths, tables and chairs;
- (4) beauty and barber shop fixtures;
- (5) cabinets and shelves;
- (6) displays, cases and racks;
- (7) office furniture;
- (8) theater seats;
- (9) water slides; and
- (10) signs, mechanical and electrical.

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

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
99	90%
98	80%
97	71%
96	62%
95	53%
94	44%
93	34%
92	23%
91 and prior	11%

5. Class 6 - Heavy and Medium Duty Trucks.

a) Examples of property in this class include:

- (1) heavy duty trucks; and
- (2) medium duty trucks.

b) Taxable value is calculated by applying the percent good factor against the actual cost of the property when purchased new or 75 percent of the manufacturer's suggested retail price. The taxable value for vehicles purchased used will be determined by applying the percent good factor to the value determined by the assessing authority. For state assessed vehicles, the value of attached equipment will be included in the total vehicle valuation.

c) The 2000 percent good applies to 2000 models purchased in 1999.

d) Trucks weighing two tons or more have a minimum value of \$1,750 and a minimum tax of \$26.25.

TABLE 6

Year of Model	Percent Good of Cost New
00	90%
99	64%
98	59%
97	55%
96	50%
95	46%
94	42%
93	37%
92	33%
91	29%
90	24%
89	20%
88	15%
87 and prior	11%

6. Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.

- a) Examples of property in this class include:
 - (1) medical and dental equipment and instruments;
 - (2) exam tables and chairs;
 - (3) high-tech hospital equipment;
 - (4) microscopes; and
 - (5) optical equipment.

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

TABLE 7

Year of Acquisition	Percent Good of Acquisition Cost
99	92%
98	83%
97	76%
96	69%
95	62%
94	55%
93	47%
92	38%
91	29%
90	19%
89 and prior	10%

7. Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

- a) Examples of property in this class include:
 - (1) manufacturing machinery;
 - (2) amusement rides;
 - (3) bakery equipment;
 - (4) distillery equipment;
 - (5) refrigeration equipment;
 - (6) laundry and dry cleaning equipment;
 - (7) machine shop equipment;
 - (8) processing equipment;
 - (9) auto service and repair equipment;
 - (10) mining equipment;
 - (11) ski lift machinery;
 - (12) printing equipment; and
 - (13) bottling or cannery equipment.

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

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
99	92%
98	83%
97	76%
96	69%
95	62%
94	55%
93	47%
92	38%

91	29%
90	19%
89 and prior	10%

8. Class 9 - Off-Highway Vehicles.

a) Examples of property in this class include:

- (1) dirt and trail motorcycles;
- (2) all terrain vehicles;
- (3) golf carts; and
- (4) snowmobiles.

b) Taxable value is calculated by applying the percent good factor against the cost new or suggested list price from the January-April NADA Motorcycle/Snowmobile/ATV Appraisal Guide.

c) The 2000 percent good applies to 2000 models purchased in 1999.

d) Off-Highway Vehicles have a minimum value of \$500 and a minimum tax of \$7.50.

TABLE 9

Year of Model	Percent Good of Cost New
00	90%
99	61%
98	58%
97	55%
96	51%
95	48%
94	45%
93	42%
92	39%
91	35%
90	32%
89	29%
88	26%
87 and prior	23%

9. Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

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

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
99	93%
98	87%
97	81%
96	75%
95	70%
94	66%
93	60%
92	53%
91	46%
90	39%
89	32%
88	25%
87	18%
86 and prior	10%

10. Class 11 - Street Motorcycles.

a) Examples of property in this class include:

- (1) street motorcycles;
- (2) scooters; and
- (3) mopeds.

b) Taxable value is calculated by applying the percent good factor against the original cost new or the suggested list price from the January-April edition of the NADA Motorcycle/Snowmobile/ATV Appraisal Guide.

c) The 2000 percent good applies to 2000 models purchased in 1999.

d) Street motorcycles have a minimum value of \$500 and a minimum tax of \$7.50.

TABLE 11

Year of Model	Percent Good of Cost New
00	90%
99	70%
98	68%
97	65%
96	63%
95	61%
94	58%
93	56%
92	54%
91	51%
90	49%
89	46%
88	44%
87	42%
86	39%
85	37%
84	34%
83 and prior	32%

11. Class 12 - Computer Hardware.

a) Examples of property in this class include:

- (1) data processing equipment;
- (2) personal computers;
- (3) main frame computers;
- (4) computer equipment peripherals; and
- (5) cad/cam systems.

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

TABLE 12

Year of Model	Percent Good of Acquisition Cost
99	86%
98	57%
97	36%
96	23%
95	14%
94 and prior	9%

12. Class 13 - Heavy Equipment.

a) Examples of property in this class include:

- (1) construction equipment;
- (2) excavation equipment;
- (3) loaders;
- (4) batch plants;

(5) snow cats; and

(6) power sweepers.

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

c) 2000 model equipment purchased in 1999 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
99	62%
98	59%
97	56%
96	52%
95	49%
94	46%
93	43%
92	39%
91	36%
90	33%
89	30%
88	26%
87	23%
86 and prior	20%

13. Class 14 - Motor Homes.

a) Taxable value is calculated by applying the percent good against the cost new derived from the January-April edition of the NADA Recreational Vehicle Appraisal Guide.

b) The 2000 percent good applies to 2000 models purchased in 1999.

TABLE 14

Year of Model	Percent Good of Cost New
00	90%
99	73%
98	70%
97	66%
96	62%
95	59%
94	55%
93	51%
92	48%
91	44%
90	41%
89	37%
88	33%
87	30%
86	26%
85	23%
84 and prior	19%

14. Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products.

a) Examples of property in this class include:

- (1) crystal growing equipment;
- (2) die assembly equipment;
- (3) wire bonding equipment;
- (4) encapsulation equipment;
- (5) semiconductor test equipment;
- (6) clean room equipment;

- (7) chemical and gas systems related to semiconductor manufacturing;
- (8) deionized water systems;
- (9) electrical systems; and
- (10) photo mask and wafer manufacturing dedicated to semiconductor production.

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

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
99	74%
98	54%
97	38%
96	24%
95 and prior	10%

15. Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

a) Examples of property in this class include:

- (1) billboards;
- (2) sign towers;
- (3) radio towers;
- (4) ski lift and tram towers;
- (5) non-farm grain elevators; and
- (6) bulk storage tanks.

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

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
99	95%
98	90%
97	86%
96	82%
95	79%
94	77%
93	73%
92	68%
91	63%
90	58%
89	54%
88	50%
87	46%
86	40%
85	34%
84	27%
83	21%
82	14%
81 and prior	7%

16. Class 17 - Boats.

a) Examples of property in this class include:

- (1) boats;
- (2) boat motors; and
- (3) personal watercraft.

b) Taxable value is calculated by applying the percent good factor against the original cost new or the F.O.B. or P.O.E. price from the ABOS Marine Blue Book.

c) The 2000 percent good applies to 2000 models purchased in 1999.

d) Boats have a minimum value of \$500 and a minimum tax of \$7.50.

TABLE 17

Year of Model	Percent Good of Cost New
00	90%
99	69%
98	67%
97	65%
96	62%
95	60%
94	58%
93	55%
92	53%
91	51%
90	48%
89	46%
88	44%
87	41%
86	39%
85	37%
84	34%
83	32%
82	30%
81	27%
80 and prior	25%

17. Class 18 - Travel Trailers/Truck Campers.

a) Examples of property in this class include:

- (1) travel trailers;
- (2) truck campers; and
- (3) tent trailers.

b) Taxable value is calculated by applying the percent good factor against the original cost new or, for travel trailers, from the January-April edition of the NADA Recreational Vehicle Appraisal Guide.

c) The 2000 percent good applies to 2000 models purchased in 1999.

d) Trailers and truck campers have a minimum value of \$500 and a minimum tax of \$7.50.

TABLE 18

Year of Model	Percent Good of Cost New
00	90%
99	70%
98	67%
97	64%
96	60%
95	57%
94	53%
93	50%
92	46%
91	43%
90	40%
89	36%
88	33%
87	29%
86	26%
85	22%
84 and prior	19%

18. Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

- a) Examples of property in this class include:
 - (1) oil and gas exploration equipment;
 - (2) distillation equipment;
 - (3) wellhead assemblies;
 - (4) holding and storage facilities;
 - (5) drill rigs;
 - (6) reinjection equipment;
 - (7) metering devices;
 - (8) cracking equipment;
 - (9) well-site generators, transformers, and power lines;
 - (10) equipment sheds;
 - (11) pumps;
 - (12) radio telemetry units; and
 - (13) support and control equipment.

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

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
99	93%
98	86%
97	80%
96	74%
95	69%
94	63%
93	56%
92	48%
91	40%
90	33%
89	26%
88	18%
87 and prior	10%

19. Class 21 - Commercial and Utility Trailers.

- a) Examples of property in this class include:
 - (1) commercial trailers;
 - (2) utility trailers;
 - (3) cargo utility trailers;
 - (4) boat trailers;
 - (5) converter gears;
 - (6) horse and stock trailers; and
 - (7) all trailers not included in Class 18.

b) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, the value of attached equipment will be included in the total vehicle valuation.

c) The 2000 percent good applies to 2000 models purchased in 1999.

d) Commercial and utility trailers have a minimum value of \$500 and a minimum tax of \$7.50.

TABLE 21

Year of Model	Percent Good of Cost New
00	95%
99	70%
98	67%
97	63%
96	59%
95	55%
94	51%
93	47%
92	44%
91	40%
90	36%
89	32%
88	28%
87	25%
86	21%
85	17%
84 and prior	13%

20. Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

a) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

b) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary for this class.

21. Class 23 - Aircraft Not Listed in the Bluebook Price Digest Subject to the Uniform Tax.

a) Examples of property in this class include:

- (1) kit-built aircraft;
- (2) experimental aircraft;
- (3) gliders;
- (4) hot air balloons; and
- (5) any other aircraft requiring FAA registration.

b) Aircraft subject to the uniform tax, but not listed in the Aircraft Bluebook Price Digest, are valued by applying the percent good factor against the acquisition cost of the aircraft.

c) Aircraft requiring Federal Aviation Agency registration and kept in Utah must be registered with the Motor Vehicle Division of the Tax Commission.

TABLE 23

Year of Acquisition	Percent Good of Acquisition Cost
99	75%
98	71%
97	67%
96	63%
95	59%
94	55%
93	51%
92	47%
91	43%
90	39%
89	35%
88 and prior	31%

22. Class 24 - Leasehold Improvements.

a) This class includes leasehold improvements to real property installed by a tenant. The Class 24 schedule is to be used only with leasehold improvements that are assessed to the lessee of the real property pursuant to Tax Commission rule R884-24P-32. Leasehold improvements include:

- (1) walls and partitions;
- (2) plumbing and roughed-in fixtures;
- (3) floor coverings other than carpet;
- (4) store fronts;
- (5) decoration;
- (6) wiring;
- (7) suspended or acoustical ceilings;
- (8) heating and cooling systems; and
- (9) iron or millwork trim.

b) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

c) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
99	94%
98	88%
97	82%
96	77%
95	71%
94	65%
93	59%
92	54%
91	48%
90	42%
89	36%
88 and prior	30%

23. Class 25 - Aircraft Manufacturing Tools and Dies.

Property in this class is generally subject to rapid physical, functional, and economic obsolescence.

a) Examples of property in this class include:

- (1) aircraft jigs and dies;
- (2) aircraft molds;
- (3) aircraft patterns;
- (4) aircraft taps and gauges;
- (5) aircraft manufacturing test equipment;
- (6) aircraft fixtures; and
- (7) special aircraft manufacturing aids.

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

TABLE 25

Year of Acquisition	Percent Good of Acquisition Cost
99	84%
98	67%
97	51%
96	34%
95	18%
94 and prior	4%

F. The [provision]provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

KEY: taxation, personal property, property tax, appraisal
[January 20,]2000 Art. XIII, Sec 2
Notice of Continuation May 8, 1997 59-2-301



Transportation, Operations, Traffic and Safety

R920-50

Tramway Operations Safety Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 22617

FILED: 01/24/2000, 10:04

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The "ANSI B77.1-1999" standard for passenger ropeways has added standards for conveyors. The use of conveyors is new to the United States and requires that standards be established and adopted to ensure the safe operation of these facilities. The purpose of this rule change is to make the ANSI B77.1-1999 conveyor standards effective in Utah.

SUMMARY OF THE RULE OR CHANGE: Adds standards for conveyors from Section 8 of "ANSI (American National Standards Institute) B-77.1-1999."

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-11-37, et seq.

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: ANSI (American National Standards Institute) B-77.1-1999

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None--this rule change does not require additional state resources because the one existing conveyor already complies with this standard.

❖LOCAL GOVERNMENTS: None--this rule change does not require additional local government resources. The one existing conveyer already complies with this standard.

❖OTHER PERSONS: None--this rule change does not require any changes to the one existing conveyor.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--this rule change does not require any changes to the existing conveyor.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule does not impact business because the one existing conveyor already complies with this standard.

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

Transportation
Operations, Traffic and Safety
Third Floor, Calvin Rampton Building
4501 South 2700 West
PO Box 143200
Salt Lake City, UT 84114-3200, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Sterling C. Davis at the above address, by phone at (801) 965-4273, by FAX at (801) 965-3845, or by Internet E-mail at src0fs02.sdavis@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/16/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2000

AUTHORIZED BY: Sterling C. Davis, Engineer

R920. Transportation, Operations, Traffic and Safety.

R920-50. Tramway Operations Safety Rules.

R920-50-1. Utah Tramway Rules for Passenger Tramways.

A. Introduction

These rules are issued pursuant to Utah Code Annotated, Section 63-11-46 to implement the Passenger Tramway Safety Act, Utah Code Ann., Sections 63-11-37 et seq.

B. Governing Standard

1. The governing standard in Utah is the standard entitled "ANSI B-77.1, 1992", published by the American National Standards Institute, 1430 Broadway, New York, New York 10018, and approved by ANSI on December 2, 1992 and Section 8 of "ANSI B-77.1, 1999", published by the American National Standards Institute, 1430 Broadway, New York, New York 10018, and approved by ANSI on March 11, 1999, and as modified by rule of the Committee. Adoption of this standard is authorized by Section 63-11-37.

2. The Utah Passenger Tramway Safety Committee reserves the right to modify, add, or delete provisions included in the Governing Standard.

C. Classification of Tramways and Applicable Standards

1. Section 1.2.4.1 of the Governing Standard is modified by the following requirements:

a. Existing installations need not comply with the new or revised requirements of the Governing Standard and these rules, except as set forth in R920-50-1.D.1.b;

b. Existing tramways, when removed and reinstalled, shall be classified as new installations (see R920-50-1-C.2);

c. Tramway modifications shall meet the requirements of R920-50-2.F and R920-50-8.

2. Section 1.2.4.2 of the Governing Standard is modified by the following requirement: New installations and those with design review completed by the Committee after the effective date of the Governing Standard, shall comply with the new or revised requirements of the Governing Standard and with these rules.

D. Inspections of Tramways

1. The annual general inspection requirements stated in ANSI B77.1, 2.3.4.1, 3.3.4.1, 4.3.4.1, 5.3.4.1 and 6.3.4.1, are replaced by the following requirements:

a. An annual general or pre-operational inspection of each passenger tramway shall be made by a Tramway Inspector prior to approval of any application for licensure. An operational inspection of each passenger tramway may be made by a Tramway Inspector at least once a year during the high-use season. For each passenger tramway inspected, items found either deficient or in noncompliance shall be noted. A report signed by the Tramway Inspector listing items found either deficient or in noncompliance shall be filed with the owner. The owner shall correct all deficiencies and noncompliance items listed in the Tramway Inspector's report or request an exception from the Governing Standard and applicable Utah Tramway Operations Safety Rules. In addition to the annual general, pre-operational, and operational inspections, the Committee may order other inspections in accordance with Section 63-11-47;

b. All installations shall comply with the new or revised requirements of the Governing Standard and these rules in the following areas, on or before the effective date of each paragraph, as set forth below:

1. Requirements for auxiliary drives, as set forth in ANSI B77.1, 2.1.2.1.1, 3.1.2.1.1, 4.1.2.1.1. These requirements shall be effective November 1, 1994;

2. Requirements for electronic speed-regulated drives, as set forth in ANSI B77.1, 2.2.1.8.2, 3.2.1.8.2, 4.2.1.8.2, 5.2.1.8.2, 6.2.1.8.2. These requirements shall be effective November 1, 1994;

3. Requirement for rope position monitoring, as set forth in ANSI B77.1, 3.1.3.3.2, paragraph 6. This requirement shall be effective November 1, 1994;

4. Requirement for fire detection system as set forth in R920-50-1.E. This requirement shall be effective November 1, 1995;

5. Requirements for friction type brakes as set forth in ANSI B77.1, 2.1.2.5, 3.1.2.5, 4.1.2.5, 5.1.2.5, 6.1.2.5. These requirements shall be effective November 1, 1995.

c. Grips, clips, hangars, chairs, carriages and cabins shall be tested according to ANSI B77.1, X.3.4.3, except as modified in this subsection c.

1. Testing personnel shall be qualified in accordance with ASNT Recommended Practice No. SNT-TC-1A-1992. Testing agency shall provide certification of qualification of personnel performing testing.

2. Testing agency inspector shall certify to the owner or area operator that the passenger tramway components tested were non-destructively tested in accordance with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer;

3. Sampling size and method of obtaining the sample shall comply with X.3.4.3 of the Governing Standard;

4. Rejection rate and retest procedures shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer;

5. Types of inspections to be performed and the procedures to be used shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer;

in conjunction with this proposed rule if an employer reports new hire information in a timely manner.
COMPLIANCE COSTS FOR AFFECTED PERSONS: Any and all compliance costs are associated with the statute that requires employers to report new hire information and provides for a \$25 penalty for employers that fail to comply.

KEY: new hire registry
[~~June 25, 1998~~2000

35A-7-101 et seq.
42 U.S.C. 654(a) et seq.
Pub. L. No. 104-193



COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The New Hire Registry is a national program. Any fiscal impact that exists is a result of Section 35A-7-106, which requires employers to report new hire information and provides for a \$25 penalty when the information is not reported in a timely manner. The proposed rule only attempts to address the limited circumstances under which the penalty will be waived.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Workforce Services
Workforce Information and Payment Services
Fourth Floor
140 East 300 South
PO Box 45277
Salt Lake City, UT 84145-0277, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Christopher Love at the above address, by phone at (801) 526-9291, by FAX at (801) 526-9394, or by Internet E-mail at wsadmpo.clove@state.ut.us.

End of the Notices of Proposed Rules Section

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/16/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2000

AUTHORIZED BY: Robert C. Gross, Executive Director

R994. Workforce Services, Workforce Information and Payment Services.

R994-315. Centralized New Hire Registry Reporting.

R994-315-105. Waiver of Penalty for Failure to Report.

(1) An employer that fails to report the hiring or re-hiring of an employee in a timely manner is subject to a civil penalty of \$25 for each such failure in accordance with Section 35A-7-106. The \$25 penalty will be waived if the employer can show good cause for failure to provide the required new hire report(s). Good cause may be established if the employer was prevented from filing a new hire report due to circumstances which were compelling and reasonable or beyond its immediate control. Payment of the \$25 penalty does not relieve the employer from the responsibility of filing the required new hire report(s).

NOTICES OF CHANGES IN PROPOSED RULES

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

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

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

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends March 16, 2000. At its option, the agency may hold public hearings.

From the end of the waiting period through June 14, 2000, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (1996); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page.

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-61
Home and Community Based Waivers

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 22513
FILED: 01/26/2000, 13:23
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish the department's authority to administer the 1915(c) waiver program. The reason for the change is to incorporate language within the text of the rule that better defines and amplifies the incorporation by reference. Since section titles are not a legal part of the rule text, and therefore do not carry any enforceable status, it is necessary that the incorporation by reference language be included in the text of the rule in order to establish enforceable status.

SUMMARY OF THE RULE OR CHANGE: In Section R414-61-2, the language "incorporated by reference" was added to the text of the section, as well as a description of the location at which the public may inspect this rule.

(DAR Note: The original proposed new rule upon which this change in proposed rule is based was published in the December 15, 1999, issue of the Utah State Bulletin.)

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

FEDERAL REQUIREMENT FOR THIS RULE: Section 1915(c) of the Social Security Act (July 1994)

ANTICIPATED COST OR SAVINGS TO:

THE STATE BUDGET: There will be no fiscal impact as the Home and Community Waivers are required by federal regulation to be cost neutral.

LOCAL GOVERNMENTS: This rule does not apply to local governments, so there should be no fiscal impact.

OTHER PERSONS: There should be no fiscal impact on other persons, as the waivers made part of the State Plan allow the agency broad discretion not generally afforded under the federal regulations to address the needs of individuals who would be expected, absent the waiver services, to require more costly institutional care.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There would not be a fiscal impact on affected persons, as described in the explanation given under "other persons."

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These waiver programs have been operating for many years. This rule establishes administrative authority. There are no substantive changes to the programs. There should be no impact on persons or businesses involved with these programs--Rod L. Betit

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

Health
Health Care Financing,
Coverage and Reimbursement Policy
Cannon Health Building
288 North 1460 West
PO Box 143102
Salt Lake City, UT 84114-3102, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Kelli Polcha at the above address, by phone at (801) 538-7069, by FAX at (801) 538-6099, or by Internet E-mail at kpolcha@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/16/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2000

AUTHORIZED BY: Rod L. Betit, Executive Director

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

R414-61. Home and Community Based Waivers.

R414-61-1. Introduction and Authority.

(1) This rule establishes authority for the Department of Health to administer all Section 1915(c) waivers.

(2) The rule is authorized by Section 26-18-3 and Section 1915(c) of the Social Security Act.

R414-61-2. Incorporation by Reference.

The Department adopts the document entitled "Utah State Plan under Title XIX of the Social Security Act" 1999 edition, and the document entitled "Home and Community Based Waiver Implementation Plan", 1999 edition, which are incorporated by reference within this rule. These documents are available for public inspection during normal working hours, at the State Health Department Building, located at 288 North, 1460 West, Salt Lake City, UT, 84114-3102, at the office of the Division of Health Care Financing. These documents will be used by the Division for the provision of services under the following waivers:

(1) Waiver for Technology Dependent/Medically Fragile Individuals, dated July 1, 1998;

(2) Waiver for Elderly Individuals 65 Years of Age and Older, dated July 1, 1995;

(3) Waiver for Individuals with Acquired Brain Injury 18 Years of Age and Older, dated July 1, 1999;

(4) Waiver for the Physically Disabled, dated July 1, 1998;

(5) Waiver for Individuals with Developmental Disabilities or Mental Retardation, dated July 1, 1995.

KEY: medicaid
2000

26-18-3

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1996).

Health, Health Systems Improvement, Health Facility Licensure

R432-7

Specialty Hospital - Psychiatric Hospital Construction

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 22630
FILED: 02/01/2000, 10:06
RECEIVED BY: NL

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, Health Facility Licensure and Inspection Act, authorizes the Utah Department of Health to promulgate rules for health care facilities. The Psychiatric Hospital Construction rule adopts the current codes and architectural guidelines for construction of psychiatric hospitals. Without the authority provided, standards for constructing a psychiatric hospital would not be available.

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 Health Facility Committee established a subcommittee that consisted of architects and providers to review the construction rules last year. As a result of the subcommittee meetings, amendments were made to the rules and they became effective December 1, 1999.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The agency agrees with the need to continue the rule with the amendments that were effective December 1, 1999. The

Health Facility Committee has reviewed the rule and supports the rule.

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

Health
Health Systems Improvement,
Health Facility Licensure
Cannon Health Building
288 North 1460 West
PO Box 142003
Salt Lake City, UT 84114-2003, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debra Wynkoop-Green at the above address, by phone at (801) 538-6152, by FAX at (801) 538-6325, or Internet E-mail at dwynkoop@doh.state.ut.us.

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 02/01/2000



Health, Health Systems Improvement, Health Facility Licensure

R432-8

Specialty Hospital - Chemical Dependency/Substance Abuse Construction

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 22631
FILED: 02/01/2000, 10:06
RECEIVED BY: NL

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, Health Facility Licensure and Inspection Act, authorizes the Utah Department of Health to promulgate rules for health care facilities. The Chemical Dependency/Substance Abuse Construction rule adopts the current codes and architectural guidelines for construction of chemical dependency/substance abuse hospitals. Without the authority provided, standards for constructing a chemical dependency/substance abuse hospital would not be available.

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 Health Facility Committee established a subcommittee that consisted of architects and providers to review the construction rules last year. As a result of the subcommittee meetings, amendments were made to the rules and they became effective December 1, 1999.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The agency agrees with the need to continue the rule with the amendments that were effective December 1, 1999. The Health Facility Committee has reviewed the rule and supports the rule.

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

Health
Health Systems Improvement,
Health Facility Licensure
Cannon Health Building
288 North 1460 West
PO Box 142003
Salt Lake City, UT 84114-2003, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debra Wynkoop-Green at the above address, by phone at (801) 538-6152, by FAX at (801) 538-6325, or Internet E-mail at dwynkoop@doh.state.ut.us.

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 02/01/2000



Health, Health Systems Improvement,
Health Facility Licensure
R432-9
Specialty Hospital - Rehabilitation
Construction Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 22632
FILED: 02/01/2000, 10:06
RECEIVED BY: NL

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, Health Facility Licensure and Inspection Act, authorizes the Utah Department of Health to promulgate rules for health care facilities. The Rehabilitation Construction Rule adopts the current codes and architectural guidelines for construction of rehabilitation hospitals. Without the authority provided, standards for constructing a rehabilitation hospital would not be available.

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 Health Facility Committee established a subcommittee that consisted of architects and providers to review the construction rules last year. As a result of the subcommittee meetings, amendments were made to the rules and they became effective December 1, 1999.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The agency agrees with the need to continue the rule with the amendments that were effective December 1, 1999. The Health Facility Committee has reviewed the rule and supports the rule.

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

Health
Health Systems Improvement,
Health Facility Licensure
Cannon Health Building
288 North 1460 West
PO Box 142003
Salt Lake City, UT 84114-2003, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debra Wynkoop-Green at the above address, by phone at (801) 538-6152, by FAX at (801) 538-6325, or Internet E-mail at dwynkoop@doh.state.ut.us.

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 02/01/2000

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

Health
Health Systems Improvement,
Health Facility Licensure
Cannon Health Building
288 North 1460 West
PO Box 142003
Salt Lake City, UT 84114-2003, or
at the Division of Administrative Rules.

**Health, Health Systems Improvement,
Health Facility Licensure
R432-10
Specialty Hospital - Chronic Disease
Construction Rule**

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

DAR FILE NO.: 22633
FILED: 02/01/2000, 10:06
RECEIVED BY: NL

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, Health Facility Licensure and Inspection Act, authorizes the Utah Department of Health to promulgate rules for health care facilities. The Chronic Disease Construction Rule adopts the current codes and architectural guidelines for construction of chronic disease hospitals. Without the authority provided, standards for constructing a chronic disease hospital would not be available.

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 Health Facility Committee established a subcommittee that consisted of architects and providers to review the construction rules last year. As a result of the subcommittee meetings, amendments were made to the rules and they became effective December 1, 1999.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The agency agrees with the need to continue the rule with the amendments that were effective December 1, 1999. The Health Facility Committee has reviewed the rule and supports the rule.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debra Wynkoop-Green at the above address, by phone at (801) 538-6152, by FAX at (801) 538-6325, or Internet E-mail at dwynkoop@doh.state.ut.us.

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 02/01/2000

**Health, Health Systems Improvement,
Health Facility Licensure
R432-11
Orthopedic Hospital Construction**

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

DAR FILE NO.: 22634
FILED: 02/01/2000, 10:06
RECEIVED BY: NL

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, Health Facility Licensure and Inspection Act, authorizes the Utah Department of Health to promulgate rules for health care facilities. The Orthopedic Hospital Construction rule adopts the current codes and architectural guidelines for construction of orthopedic hospitals. Without the authority provided, standards for constructing a orthopedic hospital would not be available.

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 Health Facility Committee established a subcommittee that consisted of architects and providers to review the construction rules last year. As a result of the subcommittee meetings, amendments were made to the rules and they became effective December 1, 1999.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The agency agrees with the need to continue the rule with the amendments that were effective December 1, 1999. The Health Facility Committee has reviewed the rule and supports the rule.

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

Health
Health Systems Improvement,
Health Facility Licensure
Cannon Health Building
288 North 1460 West
PO Box 142003
Salt Lake City, UT 84114-2003, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debra Wynkoop-Green at the above address, by phone at (801) 538-6152, by FAX at (801) 538-6325, or Internet E-mail at dwynkoop@doh.state.ut.us.

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 02/01/2000



Health, Health Systems Improvement,
Health Facility Licensure

R432-12

Small Health Care Facility (Four to
Sixteen Beds) Construction Rule

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

DAR FILE NO.: 22635
FILED: 02/01/2000, 10:06
RECEIVED BY: NL

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, Health Facility Licensure and Inspection Act, authorizes the Utah Department of Health to promulgate rules for health care facilities. The Small Health Care Facility Construction Rule adopts the current codes and architectural guidelines for construction of small health care facilities. Without the authority provided, standards for constructing a small health care facility would not be available.

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 Health Facility Committee established a subcommittee that consisted of architects and providers to review the construction rules last year. As a result of the subcommittee meetings, amendments were made to the rules and they became effective December 1, 1999.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The agency agrees with the need to continue the rule with the amendments that were effective December 1, 1999. The Health Facility Committee has reviewed the rule and supports the rule.

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

Health
Health Systems Improvement,
Health Facility Licensure
Cannon Health Building
288 North 1460 West
PO Box 142003
Salt Lake City, UT 84114-2003, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debra Wynkoop-Green at the above address, by phone at (801) 538-6152, by FAX at (801) 538-6325, or Internet E-mail at dwynkoop@doh.state.ut.us.

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 02/01/2000



Health, Health Systems Improvement,
Health Facility Licensure

R432-13

Freestanding Ambulatory Surgical
Center Construction Rule

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

DAR FILE NO.: 22636
FILED: 02/01/2000, 10:06
RECEIVED BY: NL

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, Health Facility Licensure and Inspection Act, authorizes the Utah Department of Health to promulgate rules for health care facilities. The Freestanding Ambulatory

Surgical Center Construction Rule adopts the current codes and architectural guidelines for construction of freestanding ambulatory surgical centers. Without the authority provided, standards for constructing a freestanding ambulatory surgical Center would not be available.

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 Health Facility Committee established a subcommittee that consisted of architects and providers to review the construction rules last year. As a result of the subcommittee meetings, amendments were made to the rules and they became effective December 1, 1999.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The agency agrees with the need to continue the rule with the amendments that were effective December 1, 1999. The Health Facility Committee has reviewed the rule and supports the rule.

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

Health
Health Systems Improvement,
Health Facility Licensure
Cannon Health Building
288 North 1460 West
PO Box 142003
Salt Lake City, UT 84114-2003, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debra Wynkoop-Green at the above address, by phone at (801) 538-6152, by FAX at (801) 538-6325, or Internet E-mail at dwynkoop@doh.state.ut.us.

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 02/01/2000



Health, Health Systems Improvement,
Health Facility Licensure
R432-14
Birthing Center Construction Rule

**FIVE-YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**
DAR FILE NO.: 22637
FILED: 02/01/2000, 10:06
RECEIVED BY: NL

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, Health Facility Licensure and Inspection Act, authorizes the Utah Department of Health to promulgate rules for health care facilities. The Birthing Center Construction Rule adopts the current codes and architectural guidelines for construction of birthing centers. Without the authority provided, standards for constructing a birthing center would not be available.

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 Health Facility Committee established a subcommittee that consisted of architects and providers to review the construction rules last year. As a result of the subcommittee meetings, amendments were made to the rules and they became effective December 1, 1999.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The agency agrees with the need to continue the rule with the amendments that were effective December 1, 1999. The Health Facility Committee has reviewed the rule and supports the rule.

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

Health
Health Systems Improvement,
Health Facility Licensure
Cannon Health Building
288 North 1460 West
PO Box 142003
Salt Lake City, UT 84114-2003, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debra Wynkoop-Green at the above address, by phone at (801) 538-6152, by FAX at (801) 538-6325, or Internet E-mail at dwynkoop@doh.state.ut.us.

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 02/01/2000



Health, Health Systems Improvement,
Health Facility Licensure
R432-30
Adjudicative Procedure

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 22638
FILED: 02/01/2000, 10:06
RECEIVED BY: NL

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, Health Facility Inspection Act, requires the department to adopt rules that define due process and appeal rights when the department takes action on a licensed health care facility.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received to modify this rule in the past five years or at the present. No changes are proposed at this time.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The agency agrees with the need to continue this rule because it defines the process to follow when a Notice of Agency Action is taken on a licensed health care facility, such as determinations to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license.

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

Health
Health Systems Improvement,
Health Facility Licensure
Cannon Health Building
288 North 1460 West
PO Box 142003
Salt Lake City, UT 84114-2003, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debra Wynkoop-Green at the above address, by phone at (801) 538-6152, by FAX at (801) 538-6325, or Internet E-mail at dwynkoop@doh.state.ut.us.

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 02/01/2000



Human Services, Aging and Adult Services

R510-302

Adult Protective Services

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 22619
FILED: 01/24/2000, 12:13
RECEIVED BY: NL

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: Adult Protective Services' role and responsibility is established in Section 62A-3-301, et seq. Specific authority to promulgate rules is found in Subsection 62A-3-303(2).

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.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rules clarify statute and establish for the public the manner in which they can access Adult Protective Services programs and investigation services.

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

Human Services
Aging and Adult Services
Room 325
120 North 200 West
PO Box 45500
Salt Lake City, UT 84145-0500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
C. Ronald Stromberg at the above address, by phone at (801) 538-4591, by FAX at (801) 538-4395, or Internet E-mail at rstrombe@email.state.ut.us.

AUTHORIZED BY: C. Ronald Stromberg, Assistant Director

EFFECTIVE: 01/24/2000



NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Commerce

Occupational and Professional Licensing
No. 22449 (CPR): R156-56-706. Amendments to the IPC.
Published: December 15, 1999
Effective: January 18, 2000

Real Estate

No. 22514 (AMD): R162-6. Licensee Conduct.
Published: December 15, 1999
Effective: January 27, 2000

Education

Administration

No. 22563 (REP): R277-404. Year-Round School and Effective Facility Use Program.
Published: January 1, 2000
Effective: February 1, 2000

No. 22564 (REP): R277-430. Capital Outlay Equalization Qualification.
Published: January 1, 2000
Effective: February 1, 2000

No. 22528 (AMD): R277-507. Driver Education Endorsement.
Published: January 1, 2000
Effective: February 1, 2000

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 22512 (AMD): R414-1. Utah Medicaid Program.
Published: December 15, 1999
Effective: January 26, 2000

No. 22378 (CPR): R414-303. Coverage Groups.
Published: December 15, 1999
Effective: January 26, 2000

Human Services

Recovery Services

No. 22555 (AMD): R527-5. Release of Information.
Published: January 1, 2000
Effective: February 1, 2000

No. 22556 (AMD): R527-200. Administrative Procedures.
Published: January 1, 2000
Effective: February 1, 2000

Insurance

Administration

No. 22417 (CPR): R590-196. Bail Bond Surety Fee Standards, Collateral Standards, and Disclosure Form.
Published: December 15, 1999
Effective: February 1, 2000

No. 22416 (NEW): R590-197. Treatment of Guaranty Association Assessments as Qualified Assets.
Published: October 15, 1999
Effective: January 25, 2000

Natural Resources

Oil, Gas and Mining; Coal

No. 22214 (CPR): R645-301-500. Engineering.
Published: January 1, 2000
Effective: February 1, 2000

Wildlife Resources

No. 22519 (CPR): R657-5. Taking Big Game.
Published: January 1, 2000
Effective: February 1, 2000

No. 22520 (AMD): R657-6. Taking Upland Game.
Published: December 15, 1999
Effective: January 18, 2000

No. 22521 (AMD): R657-38. Dedicated Hunter Program.
Published: December 15, 1999
Effective: January 18, 2000

No. 22562 (NEW): R657-47. Trust Fund Permits.
Published: January 1, 2000
Effective: February 1, 2000

Public Safety

Driver License

No. 22536 (AMD): R708-14. Adjudicative Proceedings For Driver License Actions Involving Alcohol and Drugs.

Published: January 1, 2000

Effective: February 1, 2000

Fire Marshal

No. 22557 (AMD): R710-1. Concerns Servicing Portable Fire Extinguishers.

Published: January 1, 2000

Effective: February 1, 2000

No. 22558 (AMD): R710-2. Rules Pursuant to the Utah Fireworks Act.

Published: January 1, 2000

Effective: February 1, 2000

No. 22559 (AMD): R710-6. Liquefied Petroleum Gas Rules.

Published: January 1, 2000

Effective: February 1, 2000

No. 22560 (AMD): R710-7. Concerns Servicing Automatic Fire Suppression Systems.

Published: January 1, 2000

Effective: February 1, 2000

No. 22561 (AMD): R710-8. Day Care Rules.

Published: January 1, 2000

Effective: February 1, 2000

End of the Notices of Effective Dates Section

Tax Commission

Property Tax

No. 22508 (AMD): R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-21101.

Published: December 1, 1999

Effective: January 20, 2000

No. 22522 (AMD): R884-24P-62. Valuation of State Assessed Utility and Transportation Properties Pursuant to Utah Code Ann. Section 59-2-201.

Published: December 15, 1999

Effective: January 20, 2000

Workforce Services

Workforce Information and Payment Services

No. 22548 (AMD): R994-202-103. Employee Leasing Companies.

Published: January 1, 2000

Effective: February 2, 2000

RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2000, including notices of effective date received through February 1, 2000, the effective dates of which are no later than February 15, 2000. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.state.ut.us/>).

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	* = Text too long to print in <i>Bulletin</i> , or repealed text not printed in <i>Bulletin</i>
5YR = Five-Year Review	
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
AGRICULTURE AND FOOD					
<u>Regulatory Services</u>					
R70-630	Water Vending Machine	22596	5YR	01/11/2000	2000-3/91
COMMERCE					
<u>Occupational and Professional Licensing</u>					
R156-56-706	Amendments to the IPC	22449	AMD	see CPR	99-21/7
R156-56-706	Amendments to the IPC	22449	CPR	01/18/2000	99-24/47
R156-57	Respiratory Care Practices Act Rules	22482	AMD	01/04/2000	99-23/13
R156-71	Naturopathic Physician Practice Act Rules	22507	AMD	01/04/2000	99-23/14
<u>Real Estate</u>					
R162-6	Licensee Conduct	22514	AMD	01/27/2000	99-24/10
EDUCATION					
<u>Administration</u>					
R277-404	Year-Round School and Effective Facility Use Program	22563	REP	02/01/2000	2000-1/8
R277-430	Capital Outlay Equalization Qualification	22564	REP	02/01/2000	2000-1/10

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R277-472	Reading Performance Improvement Awards Program	22593	NSC	01/25/2000	Not Printed
R277-507	Driver Education Endorsement	22528	AMD	02/01/2000	2000-1/11
ENVIRONMENTAL QUALITY					
<u>Air Quality</u>					
R307-403-8	Offsets: Banking of Emission Offset Credit	22607	NSC	01/25/2000	Not Printed
<u>Solid and Hazardous Waste</u>					
R315-1-1	Utah Hazardous Waste Definitions and References	22537	NSC	01/25/2000	Not Printed
R315-2	General Requirements - Identification and Listing of Hazardous Waste	22538	NSC	01/25/2000	Not Printed
R315-3	Application and Plan Approval Procedures for Hazardous Waste Treatment, Storage, and Disposal Facilities	22539	NSC	01/25/2000	Not Printed
R315-5	Hazardous Waste Generator Requirements	22541	NSC	01/25/2000	Not Printed
R315-7	Interim Status Requirements for Hazardous Waste Treatment, Storage, and Disposal Facilities	22541	NSC	01/25/2000	Not Printed
R315-8	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	22543	NSC	01/25/2000	Not Printed
R315-13	Land Disposal Restrictions	22544	NSC	01/25/2000	Not Printed
R315-16	Standards for Universal Waste Management	22545	NSC	01/25/2000	Not Printed
R315-50	Appendices	22546	NSC	01/25/2000	Not Printed
R315-101	Cleanup Action and Risk-Based Closure Standards	22547	NSC	01/25/2000	Not Printed
HEALTH					
<u>Health Care Financing, Coverage and Reimbursement Policy</u>					
R414-1	Utah Medicaid Program	22512	AMD	01/26/2000	99-24/13
R414-303	Coverage Groups	22378	AMD	see CPR	99-19/25
R414-303	Coverage Groups	22378	CPR	01/26/2000	99-24/52
<u>Health Systems Improvement, Health Facility Licensure</u>					
R432-7	Specialty Hospital - Psychiatric Hospital Construction	22630	5YR	02/01/2000	2000-4/70
R432-8	Specialty Hospital - Chemical Dependency/Substance Abuse Construction	22631	5YR	02/01/2000	2000-4/70
R432-9	Specialty Hospital - Rehabilitation Construction Rule	22632	5YR	02/01/2000	2000-4/71
R432-10	Specialty Hospital - Chronic Disease Construction Rule	22633	5YR	02/01/2000	2000-4/72
R432-11	Orthopedic Hospital Construction	22634	5YR	02/01/2000	2000-4/72
R432-12	Small Health Care Facility (Four to Sixteen Beds) Construction Rule	22635	5YR	02/01/2000	2000-4/73
R432-13	Freestanding Ambulatory Surgical Center Construction Rule	22636	5YR	02/01/2000	2000-4/73

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R432-14	Birthing Center Construction Rule	22637	5YR	02/01/2000	2000-4/74
R432-30	Adjudicative Procedure	22638	5YR	02/01/2000	2000-4/74
HUMAN SERVICES					
<u>Aging and Adult Services</u>					
R510-302	Adult Protective Services	22619	5YR	01/24/2000	2000-4/75
<u>Recovery Services</u>					
R527-5	Release of Information	22555	AMD	02/01/2000	2000-1/33
R527-24	Good Cause	22487	REP	01/10/2000	99-23/86
R527-200	Administrative Procedures	22556	AMD	02/01/2000	2000-1/37
R527-475	State Tax Refund Intercept	22488	AMD	01/10/2000	99-23/87
INSURANCE					
<u>Administration</u>					
R590-196	Bail Bond Surety Fee Standards, Collateral Standards, and Disclosure Form	22417	NEW	see CPR	99-20.28
R590-196	Bail Bond Surety Fee Standards, Collateral Standards, and Disclosure Form	22417	CPR	02/01/2000	99-24/53
R590-197	Treatment of Guaranty Association Assessments as Qualified Assets	22416	NEW	01/25/2000	99-20/30
R590-198	Valuation of Life Insurance Policies Rule	22506	NEW	01/04/2000	99-23/90
R590-198	Valuation of Life Insurance Policies Rule	22595	NSC	01/25/2000	Not Printed
LABOR COMMISSION					
<u>Antidiscrimination and Labor, Fair Housing</u>					
R608-1-3	Reliance on Federal Law	22591	NSC	01/25/2000	Not Printed
<u>Industrial Accidents</u>					
R612-8	Designation of the Initial Assessment of Noncompliance Penalties as an "Informal" Proceeding	22592	5YR	01/03/2000	2000-3/91
<u>Labor Commission</u>					
R614-1-4	Incorporation of Federal Standards	22524	NSC	01/25/2000	Not Printed
LIEUTENANT GOVERNOR					
<u>Elections</u>					
R623-1	Lieutenant Governor's Procedure for Regulation of Lobbyist Activities	22590	NSC	01/25/2000	Not Printed
NATURAL RESOURCES					
<u>Oil, Gas and Mining: Coal</u>					
R645-301-500	Engineering	22214	AMD	see CPR	99-16/32
R645-301-500	Engineering	22214	CPR	02/01/2000	2000-1/64

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>Parks and Recreation</u>					
R651-611	Fee Schedule	22474	AMD	01/03/2000	99-22/17
<u>Wildlife Resources</u>					
R657-5	Taking Big Game	22519	AMD	see CPR	99-24/25
R657-5	Taking Big Game	22519	CPR	02/01/2000	2000-1/66
R657-6	Taking Upland Game	22520	AMD	01/18/2000	99-24/35
R657-13	Taking Fish and Crayfish	22392	AMD	01/03/2000	99-20/31
R657-38	Dedicated Hunter Program	22521	AMD	01/18/2000	99-24/38
R657-47	Trust Fund Permits	22562	NEW	02/01/2000	2000-1/40
PROFESSIONAL PRACTICES ADVISORY COMMISSION					
<u>Administration</u>					
R686-100	Professional Practices Advisory Commission, Rules of Procedure: Complaints and Hearings	22504	AMD	01/05/2000	99-23/96
R686-103	Professional Practices and Conduct for Utah Educators	22505	AMD	01/05/2000	99-23/105
PUBLIC SAFETY					
<u>Driver License</u>					
R708-14	Adjudicative Proceedings For Driver License Actions Involving Alcohol and Drugs	22536	AMD	02/01/2000	2000-1/43
<u>Fire Marshal</u>					
R710-1	Concerns Servicing Portable Fire Extinguishers	22557	AMD	02/01/2000	2000-1/44
R710-2	Rules Pursuant to the Utah Fireworks Act	22558	AMD	02/01/2000	2000-1/50
R710-6	Liquefied Petroleum Gas Rules	22559	AMD	02/01/2000	2000-1/52
R710-7	Concerns Servicing Automatic Fire Suppression Systems	22560	AMD	02/01/2000	2000-1/54
R710-8	Day Care Rules	22561	AMD	02/01/2000	2000-1/57
PUBLIC SERVICE COMMISSION					
<u>Administration</u>					
R746-360-2	Definitions	22530	NSC	01/25/2000	Not Printed
R746-401	Rules Governing Reporting of Construction, Purchase, Acquisition, Sale, Transfer or Disposition of Assets by Certain Utilities	22550	NSC	01/25/2000	Not Printed
SCHOOL AND INSTITUTIONAL TRUST LANDS					
<u>Administration</u>					
R850-10	Expedited Rulemaking	22594	5YR	01/04/2000	2000-3/92
TAX COMMISSION					
<u>Property Tax</u>					
R884-24P-44	Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101	22508	AMD	01/20/2000	99-23/107

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R884-24P-62	Valuation of State Assessed Utility and Transportation Properties Pursuant to Utah Code Ann. Section 59-2-201	22522	AMD	01/20/2000	99-24/40

WORKFORCE SERVICES

Workforce Information and Payment Services

R994-202-103	Employee Leasing Companies	22548	AMD	02/02/2000	2000-1/60
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RULES INDEX - BY KEYWORD (SUBJECT)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
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5YR = Five-Year Review	
EXD = Expired	

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>ACADEMIC PERFORMANCE</u>					
Education, Administration	22593	R277-472	NSC	01/25/2000	Not Printed
<u>ADJUDICATIVE PROCEEDINGS</u>					
Public Safety, Driver License	22536	R708-14	AMD	02/01/2000	2000-1/43
<u>ADMINISTRATIVE LAW</u>					
Human Services, Recovery Services	22556	R527-200	AMD	02/01/2000	2000-1/37
<u>ADMINISTRATIVE PROCEDURES</u>					
School and Institutional Trust Lands, Administration	22594	R850-10	5YR	01/04/2000	2000-3/92
<u>ADULT PROTECTIVE SERVICES</u>					
Human Services, Aging and Adult Services	22619	R510-302	5YR	01/24/2000	2000-4/75
<u>AFDC (Aid to Families with Dependent Children)</u>					
Human Services, Recovery Services	22487	R527-24	REP	01/10/2000	99-23/86
<u>AIR QUALITY</u>					
Environmental Quality, Air Quality	22607	R307-403-8	NSC	01/25/2000	Not Printed
<u>APPRAISAL</u>					
Tax Commission, Property Tax	22508	R884-24P-44	AMD	01/20/2000	99-23/107
	22522	R884-24P-62	AMD	01/20/2000	99-24/40

<u>KEYWORD</u> AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>BIG GAME SEASONS</u>					
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