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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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EDITOR'S NOTES

LEGISLATION WHICH AFFECTS RULEMAKING

The 54th Legislature's 2001 General Session ended on February 28, 2001. During the session, two bills passed that affect administrative rules in general.

H.B. 27 "Electronic Government Services Amendments - Administrative Rules and Procedures" by Rep. R. Siddoway (R)

This bill originated in the Information Technology Commission. It amends both the Utah Administrative Rulemaking Act (Utah Code Title 63, Chapter 46a) and the Utah Administrative Procedures Act (Utah Code Title 63, Chapter 46b). It standardizes language to facilitate the electronic conduct of state business in regards to rulemaking and administrative procedures.

The bill passed the House on January 15, 2001, under suspension of the rules, and passed the Senate on January 26, 2001. It has been enrolled and sent to the Governor for his signature. Because no effective date was specified, this bill is scheduled to take effect April 30, 2001, pending the Governor's signature. A copy of the enrolled bill is published in this issue of the *Bulletin*.

H.B. 37 "Reauthorization of Administrative Rules" by Rep. David Ure (R)

This is the Administrative Rules Review Committee's annual bill which is required by Section 63-46a-11.5. The long title of H.B. 37 indicates that the bill "reauthorizes all state agency administrative rules except those enumerated." As introduced, the bill reauthorized all administrative rules EXCEPT Subsection R156-55b-102(2)--Commerce, Division of Occupational and Professional Licensing (DOPL), "Electricians Licensing Rules," "Definitions," definition of "In or out of the immediate presence of the supervising person".

The House Government Operations Standing Committee amended the bill to also "not reauthorize" a similar provision in Subsection R156-55c-102(3)--Commerce, DOPL, "Construction Trades Licensing Act Plumber Licensing Rules," "Definitions," definition of "Reasonable direction, oversight, inspection, and evaluation of an apprentice plumber by a supervising journeyman plumber".

The bill passed the House on February 5, 2001, and passed the Senate on February 16, 2001. It has been enrolled and sent to the Governor for his signature. The bill provides for an effective date of May 1, 2001, and will go into effect that day pending the Governor's signature. A copy of the enrolled bill is published in this issue of the *Bulletin*.

Additional Information

Information about legislation related to rulemaking is available on the Internet at:

<http://www.rules.state.ut.us/law/legis.htm>. Additional information about the 2001 General Session and specific legislation is available from the Legislature's Office of Legislative Research and General Counsel at:

<http://www.le.state.ut.us/~2001/2001.htm>. The Legislature's home page can be found at: <http://www.le.state.ut.us/>.

Questions about this legislation may be directed to Ken Hansen, Director, Division of Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007, phone: (801) 538-3777, FAX: (801) 538-1773, or Internet E-mail: khansen@das.state.ut.us

The Enrolled Bills Begin on the Following Page

**ELECTRONIC GOVERNMENT SERVICES AMENDMENTS -
ADMINISTRATIVE RULES AND PROCEDURES**

2001 GENERAL SESSION
STATE OF UTAH

Sponsor: Richard M. Siddoway

This act modifies the Utah Administrative Rulemaking Act and the Administrative Procedures Act by amending statutory language to facilitate the electronic delivery of government services by governmental agencies. The act provides definitions for purposes of electronic records in governmental agencies. The act amends provisions relating to the cost of rulemaking publications.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

- 26-1-5, as enacted by Chapter 126, Laws of Utah 1981
- 63-46a-2, as last amended by Chapter 60, Laws of Utah 1996
- 63-46a-3, as last amended by Chapter 332, Laws of Utah 1998
- 63-46a-4, as last amended by Chapter 219, Laws of Utah 1998
- 63-46a-6, as last amended by Chapter 60, Laws of Utah 1996
- 63-46a-7, as last amended by Chapter 219, Laws of Utah 1998
- 63-46a-10, as last amended by Chapter 60, Laws of Utah 1996
- 63-46a-10.5, as last amended by Chapter 219, Laws of Utah 1998
- 63-46a-11, as last amended by Chapter 332, Laws of Utah 1998
- 63-46a-12.1, as enacted by Chapter 224, Laws of Utah 1990
- 63-46b-3, as last amended by Chapter 72, Laws of Utah 1988
- 63-46b-6, as last amended by Chapter 72, Laws of Utah 1988
- 63-46b-9, as enacted by Chapter 161, Laws of Utah 1987
- 63-46b-10, as last amended by Chapter 72, Laws of Utah 1988
- 63-46b-12, as last amended by Chapter 72, Laws of Utah 1988
- 63-46b-13, as last amended by Chapter 72, Laws of Utah 1988
- 63-46b-15, as last amended by Chapter 164, Laws of Utah 1999

ENACTS:

46-4-502, Utah Code Annotated 1953

63-46a-17, Utah Code Annotated 1953

63-46b-23, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **26-1-5** is amended to read:

26-1-5. Rules of department.

(1) Except in areas regulated by statutory committees created by this title, the department shall have the power to adopt, amend, or rescind rules necessary to carry out the provisions of this title.

(2) Rules shall have the force and effect of law and may deal with matters which materially affect the security of health or the preservation and improvement of public health in the state, and any matters as to which jurisdiction is conferred upon the department by this title.

(3) Every rule adopted by the department pursuant to this section, or a committee established under Section 26-1-7 or 26-1-7.5 , shall be subject to ~~[the]~~ Title 63, Chapter 46a, Utah Administrative Rulemaking Act~~[-]~~ and shall become effective at the time and in the manner provided in ~~[the Utah Administrative Rulemaking Act, and shall be signed by the executive director]~~ that act.

~~[(4) At the time a rule adopted by the department or a committee established by Section 26-1-7 or 26-1-7.5 , is filed with the state archivist it shall also be filed with the legislative research director.]~~

~~[(5)]~~ (4) If, at the next general session of the legislature following the filing of a rule with the legislative research director, the legislature passes a bill disapproving such rule, the rule shall be null and void.

~~[(6)]~~ (5) The department or a committee created under Section 26-1-7 or 26-1-7.5 , shall not adopt a rule identical to a rule disapproved under Subsection ~~[(5)]~~ (4) of this section, before the beginning of the next general session of the legislature following the general session at which the rule was disapproved.

Section 2. Section **46-4-502** is enacted to read:

46-4-502. Definitions.

For purposes of this part:

(1) "Copy" may include an electronic version of a document.

(2) "Mail" may include sending a document electronically, provided that the recipient can accept and process the electronic writing.

(3) "Mailing address" may include an electronic mailing address capable of receiving and processing an electronic writing.

(4) "Sign" or "signature" may include any form of electronic signature authorized by the governmental agency.

(5) "Written" or "writing" means information that is:

(a) inscribed on a tangible medium; or

(b) stored in an electronic or other medium and is retrievable.

Section 3. Section **63-46a-2** is amended to read:

63-46a-2. Definitions.

As used in this chapter:

(1) "Administrative record" means information an agency relies upon when making a rule under this chapter including [~~copies of~~]:

(a) the proposed rule, change in the proposed rule, and the rule analysis form;

(b) the public comment received and recorded by the agency during the public comment period;

(c) the agency's response to the public comment;

(d) the agency's analysis of the public comment; and

(e) the agency's report of its decision-making process.

(2) "Agency" means each state board, authority, commission, institution, department, division, officer, or other state government entity other than the Legislature, its committees, the political subdivisions of the state, or the courts, which is authorized or required by law to make rules, adjudicate, grant or withhold licenses, grant or withhold relief from legal obligations, or perform other similar actions or duties delegated by law.

(3) "Bulletin" means the Utah State Bulletin.

(4) "Catchline" means a short summary of each section, part, rule, or title of the code that follows the section, part, rule, or title reference placed before the text of the rule and serves the same function as boldface in legislation as described in Section 68-3-13.

(5) "Code" means the body of all effective rules as compiled and organized by the division and entitled "Utah Administrative Code."

(6) "Director" means the director of the Division of Administrative Rules.

(7) "Division" means the Division of Administrative Rules.

(8) "Effective" means operative and enforceable.

(9) (a) "File" means to submit a document to the division as prescribed by ~~[this chapter]~~ the division.

(b) "Filing date" means the day and time the document is recorded as received by the division.

(10) "Interested person" means any person affected by or interested in a proposed rule, amendment to an existing rule, or a nonsubstantive change made under Section 63-46a-10.

(11) "Order" means an agency action that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.

(12) "Person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency.

(13) (a) "Policy" means a statement applying to persons or agencies that:

- (i) broadly prescribes a future course of action, guidelines, principles, or procedures; or
- (ii) prescribes the internal management of an agency.

(b) A policy is a rule if it conforms to the definition of a rule.

(14) "Publication" or "publish" means making a rule available to the public by ~~[printing]~~ including the rule or a summary of the rule in the bulletin.

(15) "Publication date" means the inscribed date of the bulletin.

~~(16)~~ "Register" may include an electronic database.

~~(16)~~ (17) (a) "Rule" means an agency's written statement that:

EDITOR'S NOTES

(i) is explicitly or implicitly required by state or federal statute or other applicable law;

(ii) has the effect of law;

(iii) implements or interprets a state or federal legal mandate; and

(iv) applies to a class of persons or another agency.

(b) "Rule" includes the amendment or repeal of an existing rule.

(c) "Rule" does not mean:

(i) orders;

(ii) unenforceable policies;

(iii) internal management policies of the agency that do not restrict the legal rights of a class

of persons or another agency;

(iv) the governor's executive orders or proclamations;

(v) opinions issued by the attorney general's office;

(vi) declaratory rulings issued by the agency according to ~~the provisions of~~ Section

63-46b-21 except as required by Section 63-46a-3 ; or

(vii) rulings by an agency in adjudicative proceedings, except as required by Subsection

63-46a-3 (6).

~~[(17)]~~ (18) "Rule analysis" means the format prescribed by the division to summarize and analyze rules.

~~[(18)]~~ (19) "Substantive change" means a change in a rule that affects the application or results of agency actions.

Section 4. Section **63-46a-3** is amended to read:

63-46a-3. When rulemaking is required.

(1) Each agency shall:

(a) maintain a ~~complete copy~~ current version of its ~~current~~ rules; and

(b) make it available to the public for inspection during its regular business hours.

(2) In addition to other rulemaking required by law, each agency shall make rules when

agency action:

(a) authorizes, requires, or prohibits an action;

- (b) provides or prohibits a material benefit;
- (c) applies to a class of persons or another agency; and
- (d) is explicitly or implicitly authorized by statute.

(3) Rulemaking is also required when an agency issues a written interpretation of a state or federal legal mandate.

(4) Rulemaking is not required when:

(a) agency action applies only to internal agency management, inmates or residents of a state correctional, diagnostic, or detention facility, persons under state legal custody, patients admitted to a state hospital, members of the state retirement system, or students enrolled in a state education institution;

(b) a standardized agency manual applies only to internal fiscal or administrative details of governmental entities supervised under statute;

(c) an agency issues policy or other statements that are advisory, informative, or descriptive, and do not conform to the requirements of Subsections (2) and (3); or

(d) an agency makes nonsubstantive changes in a rule, except that the agency shall file all nonsubstantive changes in a rule with the division.

(5) A rule shall enumerate any penalty authorized by statute that may result from its violation.

(6) Each agency shall enact rules incorporating the principles of law not already in its rules that are established by final adjudicative decisions within 120 days after the decision is announced in its cases.

(7) (a) Each agency may enact a rule that incorporates by reference:

(i) all or any part of another code, rule, or regulation that has been adopted by a federal agency, an agency or political subdivision of this state, an agency of another state, or by a nationally recognized organization or association;

(ii) state agency implementation plans mandated by the federal government for participation in the federal program;

(iii) lists, tables, illustrations, or similar materials that are subject to frequent change, fully

described in the rule, and are available for public inspection; or

(iv) lists, tables, illustrations, or similar materials that the director determines are too expensive to reproduce in the administrative code.

(b) Rules incorporating materials by reference shall:

(i) be enacted according to the procedures outlined in this chapter;

(ii) state that the referenced material is incorporated by reference;

(iii) state the date, issue, or version of the material being incorporated; and

(iv) define specifically what material is incorporated by reference and identify any agency deviations from it.

(c) The agency shall identify any substantive changes in the material incorporated by reference by following the rulemaking procedures of this chapter.

(d) The agency shall maintain a complete and current copy of the referenced material available for public ~~[inspection]~~ review at the agency and at the division.

(8) (a) This chapter is not intended to inhibit the exercise of agency discretion within the limits prescribed by statute or agency rule.

(b) An agency may enact a rule creating a justified exception to a rule.

(9) An agency may obtain assistance from the attorney general to ensure that its rules meet legal and constitutional requirements.

Section 5. Section **63-46a-4** is amended to read:

63-46a-4. Rulemaking procedure.

(1) Except as provided in Sections 63-46a-6 and 63-46a-7 , when making, amending, or repealing a rule agencies shall comply with:

(a) the requirements of this section;

(b) consistent procedures required by other statutes;

(c) applicable federal mandates; and

(d) rules made by the division to implement this chapter.

(2) Subject to the requirements of this chapter, each agency shall develop and use flexible approaches in drafting rules that meet the needs of the agency and that involve persons affected by

the agency's rules.

(3) (a) Each agency shall file its proposed rule and rule analysis with the division.

(b) [(†)] Rule amendments shall be marked with new language underlined and deleted language struck out.

~~[(ii) Alternatively, the repeal of an entire rule may be indicated by annotating the rule "repealed in its entirety" prominently on every page.]~~

(c) (i) The division shall publish the information required under Subsection (3) on the rule analysis and the text of the proposed rule in the next issue of the bulletin.

(ii) For rule amendments, only the section or subsection of the rule being amended need be printed.

(iii) If the director determines that the rule is too long to publish, the director shall publish the rule analysis and shall publish the rule by reference to a copy on file with the division.

(4) Prior to filing a rule with the division, the department head shall consider and comment on the fiscal impact a rule may have on businesses.

(5) The rule analysis shall contain:

(a) a summary of the rule or change;

(b) the purpose of the rule or reason for the change;

(c) the statutory authority or federal requirement for the rule;

(d) the anticipated cost or savings to:

(i) the state budget;

(ii) local governments; and

(iii) other persons;

(e) the compliance cost for affected persons;

(f) how interested persons may ~~inspect~~ review the full text of the rule;

(g) how interested persons may present their views on the rule;

(h) the time and place of any scheduled public hearing;

(i) the name and telephone number of an agency employee who may be contacted about the rule;

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(j) the name of the agency head or designee who authorized the rule;

(k) the date on which the rule may become effective following the public comment period;

and

(l) comments by the department head on the fiscal impact the rule may have on businesses.

(6) (a) For a rule being repealed and reenacted, the rule analysis shall contain a summary that generally includes the following:

(i) a summary of substantive provisions in the repealed rule which are eliminated from the enacted rule; and

(ii) a summary of new substantive provisions appearing only in the enacted rule.

(b) The summary required under this Subsection (6) is to aid in review and may not be used to contest any rule on the ground of noncompliance with the procedural requirements of this chapter.

(7) A copy of the rule analysis shall be mailed to all persons who have made timely request of the agency for advance notice of its rulemaking proceedings and to any other person who, by statutory or federal mandate or in the judgment of the agency, should also receive notice.

(8) Following the publication date, the agency shall allow at least 30 days for public comment on the rule.

(9) (a) Except as provided in Sections 63-46a-6 and 63-46a-7, a proposed rule becomes effective on any date specified by the agency that is no fewer than 30 nor more than 120 days after the publication date.

(b) The agency shall provide notice of the rule's effective date to the division in the form required by the division.

(c) The notice of effective date may not provide for an effective date prior to the date it is received by the division.

(d) The division shall publish notice of the effective date of the rule in the next issue of the bulletin.

(e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is not filed with the division within 120 days of publication.

Section 6. Section **63-46a-6** is amended to read:

63-46a-6. Changes in rules.

(1) (a) To change a proposed rule already published in the bulletin, an agency shall file with the division:

(i) ~~a copy~~ the text of the changed rule; and

(ii) a rule analysis containing a description of the change and the information required by Section 63-46a-4.

(b) A change to a proposed rule may not be filed more than 120 days after publication of the rule being changed.

(c) The division shall publish the rule analysis for the changed rule in the bulletin.

(d) The changed proposed rule and its associated proposed rule will become effective on a date specified by the agency, not less than 30 days or more than 120 days after publication of the last change in proposed rule.

(e) A changed proposed rule and its associated proposed rule lapse if a notice of effective date or another change to a proposed rule is not filed with the division within 120 days of publication of the last change in proposed rule.

(2) If the rule change is nonsubstantive:

(a) the agency need not comply with the requirements of Subsection (1); and

(b) the agency shall notify the division of the change in writing.

(3) If the rule is effective, the agency shall amend the rule according to the procedures specified in Section 63-46a-4.

Section 7. Section **63-46a-7** is amended to read:

63-46a-7. Exceptions to rulemaking procedure.

(1) All agencies shall comply with the rulemaking procedures of Section 63-46a-4 unless an agency finds that these procedures would:

(a) cause an imminent peril to the public health, safety, or welfare;

(b) cause an imminent budget reduction because of budget restraints or federal requirements;

or

(c) place the agency in violation of federal or state law.

EDITOR'S NOTES

(2) (a) When finding that its rule is excepted from regular rulemaking procedures by this section, the agency shall file with the division:

(i) ~~[a copy]~~ the text of the rule; and

(ii) a rule analysis that includes the specific reasons and justifications for its findings.

(b) The division shall publish the rule in the bulletin as provided in Subsection 63-46a-4 (3).

(c) The agency shall notify interested persons as provided in Subsection 63-46a-4 (7).

(d) The rule becomes effective for a period not exceeding 120 days on the date of filing or any later date designated in the rule.

(3) If the agency intends the rule to be effective beyond 120 days, the agency shall also comply with the procedures of Section 63-46a-4.

Section 8. Section **63-46a-10** is amended to read:

63-46a-10. Division of Administrative Rules -- Duties generally.

(1) The Division of Administrative Rules shall:

(a) establish all filing, publication, and hearing procedures necessary to make rules under this chapter;

(b) record in a register the receipt of all agency rules, rule analysis forms, and notices of effective dates;

(c) make the register, copies of all proposed rules, and rulemaking documents available for public inspection;

(d) publish all proposed rules, rule analyses, notices of effective dates, and review notices in the bulletin at least monthly, except that the division may publish the complete text of any proposed rule that the director determines is too long to print or too expensive to publish by reference to ~~[a copy on file]~~ the text maintained by the division;

(e) compile, format, number, and index all effective rules in an administrative code, and periodically publish that code and supplements or revisions to it;

(f) publish a digest~~[, at least monthly, summarizing]~~ of all rules and notices ~~[printed]~~ contained in the most recent bulletin;

(g) publish at least annually an index of all changes to the administrative code and the

effective date of each change;

(h) print, or contract to print, all rulemaking publications the division determines necessary to implement this chapter;

(i) distribute without charge [~~copies of~~] the bulletin and administrative code to state-designated repositories, the Administrative Rules Review Committee, the Office of Legislative Research and General Counsel, and the two houses of the Legislature;

(j) distribute without charge [~~copies of~~] the digest and index to state legislators, agencies, political subdivisions on request, and the Office of Legislative Research and General Counsel;

(k) distribute, at prices covering [~~an~~] publication costs, all paper rulemaking publications to all other requesting persons and agencies;

(l) provide agencies assistance in rulemaking; and

(m) administer this chapter and require state agencies to comply with filing, publication, and hearing procedures.

(2) The division may after notifying the agency make nonsubstantive changes to rules filed with the division or published in the bulletin or code by:

(a) implementing a uniform system of formatting, punctuation, capitalization, organization, numbering, and wording;

(b) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering, referencing, and wording;

(c) changing a catchline to more accurately reflect the substance of each section, part, rule, or title;

(d) updating or correcting annotations associated with a section, part, rule, or title; and

(e) merging or determining priority of any amendment, enactment, or repeal to the same rule or section made effective by an agency.

(3) In addition, the division may make the following nonsubstantive changes with the concurrence of the agency:

(a) eliminate duplication within rules;

(b) eliminate obsolete and redundant words; and

(c) correcting defective or inconsistent section and paragraph structure in arrangement of the subject matter of rules.

(4) For nonsubstantive changes made in accordance with Subsection (2) or (3) after publication of the rule in the bulletin, the division shall publish a list of nonsubstantive changes in the bulletin. For each nonsubstantive change, the list shall include:

- (a) the affected code citation;
- (b) a brief description of the change; and
- (c) the date the change was made.

(5) All funds appropriated or collected for publishing the division's publications shall be nonlapsing.

Section 9. Section **63-46a-10.5** is amended to read:

63-46a-10.5. Repeal and reenactment of Utah Administrative Code.

(1) When the director determines that the Utah Administrative Code requires extensive revision and reorganization, the division may repeal the code and reenact a new code according to the requirements of this section.

(2) The division may:

(a) reorganize, reformat, and renumber the code;

(b) require each agency to review its rules and make any organizational or substantive changes according to the requirements of Section 63-46a-6 ; and

(c) require each agency to prepare a brief summary of all substantive changes made by the agency.

(3) The division may make nonsubstantive changes in the code by:

- (a) adopting a uniform system of punctuation, capitalization, numbering, and wording;
- (b) eliminating duplication;
- (c) correcting defective or inconsistent section and paragraph structure in arrangement of the subject matter of rules;
- (d) eliminating all obsolete or redundant words;
- (e) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering,

referencing, and wording;

(f) changing a catchline to more accurately reflect the substance of each section, part, rule, or title;

(g) updating or correcting annotations associated with a section, part, rule, or title; and

(h) merging or determining priority of any amendment, enactment, or repeal to the same rule or section made effective by an agency.

(4) (a) To inform the public about the proposed code reenactment, the division shall publish in the bulletin:

(i) notice of the code reenactment;

(ii) the date, time, and place of a public hearing where members of the public may comment on the proposed reenactment of the code;

(iii) locations where the proposed reenactment of the code may be ~~inspected~~ reviewed; and

(iv) agency summaries of substantive changes in the reenacted code.

(b) To inform the public about substantive changes in agency rules contained in the proposed reenactment, each agency shall:

(i) make ~~copies~~ the text of their reenacted rules available;

~~(A) for public inspection~~ review during regular business hours; and

~~(B) in an electronic version~~; and

(ii) comply with the requirements of Subsection 63-46a-4 (7).

(5) The division shall hold a public hearing on the proposed code reenactment no fewer than 30 days nor more than 45 days after the publication required by Subsection (3)(a).

(6) The division shall distribute complete ~~copies~~ text of the proposed code reenactment without charge to:

(a) state-designated repositories in Utah;

(b) the Administrative Rules Review Committee; and

(c) the Office of Legislative Research and General Counsel.

(7) The former code is repealed and the reenacted code is effective at noon on a date designated by the division that is not fewer than 45 days nor more than 90 days after the publication

date required by this section.

(8) Repeal and reenactment of the code meets the requirements of Section 63-46a-9 for a review of all agency rules.

Section 10. Section **63-46a-11** is amended to read:

63-46a-11. Administrative Rules Review Committee.

(1) (a) There is created an Administrative Rules Review Committee of ten permanent members and four ex officio members.

(b) (i) The committee's permanent members shall be composed of five members of the Senate, appointed by the president of the Senate, and five members of the House, appointed by the speaker of the House, with no more than three senators and three representatives from the same political party.

(ii) The permanent members shall convene at least once each month as a committee to review new agency rules, amendments to existing agency rules, and repeals of existing agency rules. Meetings may be suspended at the discretion of the committee chairs.

(iii) Members shall serve for two-year terms or until their successors are appointed.

(iv) A vacancy exists whenever a committee member ceases to be a member of the Legislature, or when a member resigns from the committee. Vacancies shall be filled by the appointing authority, and the replacement shall serve out the unexpired term.

(c) When the committee reviews existing rules, the committee's permanent members shall invite the Senate and House chairmen of the standing committee and the Senate and House chairmen of the appropriation subcommittee that have jurisdiction over the agency whose existing rules are being reviewed to participate as nonvoting, ex officio members with the committee.

(d) Three representatives and three senators from the permanent members are a quorum for the transaction of business at any meeting.

(2) Each agency rule as defined in Section 63-46a-2 shall be submitted to the committee at the same time public notice is given under Section 63-46a-4.

(3) (a) The committee shall exercise continuous oversight of the process of rulemaking.

(b) The committee shall examine rules submitted by each agency to determine:

(i) whether or not they are authorized by statute;

(ii) whether or not they comply with legislative intent;

(iii) their impact on the economy and the government operations of the state and local political subdivisions; and

(iv) their impact on affected persons.

(c) To carry out these duties, the committee may examine any other issues that it considers necessary. The committee may also notify and refer rules to the chairmen of the interim committee which has jurisdiction over a particular agency when the committee determines that an issue involved in an agency's rules may be more appropriately addressed by that committee.

(d) In reviewing the rules, the committee shall follow generally accepted principles of statutory construction.

(4) The committee may request that the Office of the Legislative Fiscal Analyst prepare a fiscal note on any rule.

(5) In order to accomplish its oversight functions, the committee has all the powers granted to legislative interim committees as set forth in Section 36-12-11.

(6) (a) The committee may prepare written findings of its review of each rule and may include any recommendations, including legislative action.

(b) The committee shall provide to the agency that enacted the rule:

(i) ~~a copy of~~ its findings, if any; and

(ii) a request that the agency notify the committee of any changes it makes in the rule.

(c) The committee shall provide ~~a copy of~~ its findings to any member of the Legislature and to any person affected by the rule who requests ~~a copy~~ the findings.

(d) The committee shall provide ~~a copy of~~ its findings to the presiding officers of both the House and the Senate, Senate and House ~~chairmen~~ chair of the standing committee, and the Senate and House chairmen of the Appropriation Subcommittee that have jurisdiction over the agency whose rules are the subject of the findings.

(7) (a) The committee may submit a report on its review of state agency rules to each member of the Legislature at each regular session.

(b) The report shall include:

- (i) the findings and recommendations made by the committee under Subsection (6);
- (ii) any action taken by an agency in response to committee recommendations; and
- (iii) any recommendations by the committee for legislation.

Section 11. Section **63-46a-12.1** is amended to read:

63-46a-12.1. Judicial challenge to administrative rules.

(1) (a) Any person aggrieved by a rule may obtain judicial review of the rule by filing a complaint with the county clerk in the district court where the person resides or in the district court in Salt Lake County.

(b) Any person aggrieved by an agency's failure to comply with Section 63-46a-3 may obtain judicial review of the agency's failure to comply by filing a complaint with the clerk of the district court where the person resides or in the district court in Salt Lake County.

(2) (a) Except as provided in Subsection (2)(b), a person seeking judicial review under this section shall exhaust ~~[his]~~ that person's administrative remedies by complying with the requirements of Section 63-46a-12 before filing the complaint.

(b) When seeking judicial review of a rule, the person need not exhaust ~~[his]~~ that person's administrative remedies if:

(i) less than six months has passed since the date that the rule became effective and the person had submitted verbal or written comments on the rule to the agency during the public comment period;

(ii) a statute granting rulemaking authority expressly exempts rules made under authority of that statute from compliance with Section 63-46a-12 ; or

(iii) compliance with Section 63-46a-12 would cause the person irreparable harm.

(3) (a) ~~[Besides]~~ In addition to the information required by the Utah Rules of Civil Procedure, a complaint filed under this section shall contain:

- (i) the name and mailing address of the plaintiff;
- (ii) the name and mailing address of the defendant agency;
- (iii) the name and mailing address of any other party joined in the action as a defendant;

(iv) ~~a copy~~ the text of the rule or proposed rule, if any;

(v) an allegation that ~~he~~ the person filing the complaint has either exhausted the administrative remedies by complying with Section 63-46a-12 or met the requirements for waiver of exhaustion of administrative remedies established by Subsection (2)(b);

(vi) the relief sought; and

(vii) factual and legal allegations supporting the relief sought.

(b) (i) The plaintiff shall serve a summons and a copy of the complaint as required by the Utah Rules of Civil Procedure.

(ii) The defendants shall file a responsive pleading as required by the Utah Rules of Civil Procedures.

(iii) The agency shall file the administrative record of the rule, if any, with its responsive pleading.

(4) The district court may grant relief to the petitioner by:

(a) declaring the rule invalid, if the court finds that:

(i) the rule violates constitutional or statutory law or the agency does not have legal authority to make the rule;

(ii) the rule is not supported by substantial evidence when viewed in light of the whole administrative record; or

(iii) the agency did not follow proper rulemaking procedure;

(b) declaring the rule nonapplicable to the petitioner;

(c) remanding the matter to the agency for compliance with proper rulemaking procedures or further fact-finding;

(d) ordering the agency to comply with Section 63-46a-3 ;

(e) issuing a judicial stay or injunction to enjoin the agency from illegal action or action that would cause irreparable harm to the petitioner; or

(f) any combination of Subsections (4)(a) through (e).

(5) If the plaintiff meets the requirements of Subsection (2)(b), the district court may review and act on a complaint under this section whether or not the plaintiff has requested the agency review

under Section 63-46a-12.

Section 12. Section **63-46a-17** is enacted to read:

63-46a-17. Electronic records and conversion of written records by governmental agencies.

A governmental agency may make rules regarding electronic records and conversion of written records as prescribed by Title 46, Chapter 4, Part 5, Electronic Records in Government Agencies.

Section 13. Section **63-46b-3** is amended to read:

63-46b-3. Commencement of adjudicative proceedings.

(1) Except as otherwise permitted by Section 63-46b-20 , all adjudicative proceedings shall be commenced by either:

- (a) a notice of agency action, if proceedings are commenced by the agency; or
- (b) a request for agency action, if proceedings are commenced by persons other than the

agency.

(2) A notice of agency action shall be filed and served according to the following requirements:

(a) The notice of agency action shall be in writing, signed by a presiding officer, and shall include:

(i) the names and mailing addresses of all 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;

(ii) the agency's file number or other reference number;

(iii) the name of the adjudicative proceeding;

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

(v) a statement of whether the adjudicative proceeding is to be conducted informally according to the provisions of rules adopted under Sections 63-46b-4 and 63-46b-5 , or formally according to the provisions of Sections 63-46b-6 to 63-46b-11 ;

(vi) if the adjudicative proceeding is to be formal, a statement that each respondent must file

a written response within 30 days of the mailing date of the notice of agency action;

(vii) if the adjudicative proceeding is to be formal, or if a hearing is required by statute or rule, a statement of the time and place of any scheduled hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default;

(viii) if the adjudicative proceeding is to be informal and a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party within the time prescribed by rule, a statement that the parties may request a hearing within the time provided by the agency's rules;

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

(x) the name, title, mailing address, and telephone number of the presiding officer; and

(xi) a statement of the purpose of the adjudicative proceeding and, to the extent known by the presiding officer, the questions to be decided.

(b) When adjudicative proceedings are commenced by the agency, the agency shall:

(i) mail the notice of agency action to each party;

(ii) publish the notice of agency action, if required by statute; and

(iii) mail the notice of agency action to any other person who has a right to notice under statute or rule.

(3) (a) Where the law applicable to the agency permits persons other than the agency to initiate adjudicative proceedings, that person's request for agency action shall be in writing and signed by the person invoking the jurisdiction of the agency, or by ~~his~~ that person's representative, and shall include:

(i) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(ii) the agency's file number or other reference number, if known;

(iii) the date that the request for agency action was mailed;

(iv) a statement of the legal authority and jurisdiction under which agency action is

requested;

(v) a statement of the relief or action sought from the agency; and

(vi) a statement of the facts and reasons forming the basis for relief or agency action.

(b) The person requesting agency action shall file the request with the agency and shall

~~send~~ mail a copy ~~by mail~~ to each person known to have a direct interest in the requested agency action.

(c) An agency may, by rule, prescribe one or more ~~printed~~ forms eliciting the information required by Subsection (3)(a) to serve as the request for agency action when completed and filed by the person requesting agency action.

(d) The presiding officer shall promptly review a request for agency action and shall:

(i) notify the requesting party in writing that the request is granted and that the adjudicative proceeding is completed;

(ii) notify the requesting party in writing that the request is denied and, if the proceeding is a formal adjudicative proceeding, that the party may request a hearing before the agency to challenge the denial; or

(iii) notify the requesting party that further proceedings are required to determine the agency's response to the request.

(e) (i) Any notice required by Subsection (3)(d)(ii) shall contain the information required by Subsection 63-46b-5 (1)(i) in addition to disclosure required by Subsection (3)(d)(ii) ~~[of this section]~~.

(ii) The agency shall mail any notice required by Subsection (3)(d) to all parties, except that any notice required by Subsection (3)(d)(iii) may be published when publication is required by statute.

(iii) The notice required by Subsection (3)(d)(iii) shall:

(A) give the agency's file number or other reference number;

(B) give the name of the proceeding;

(C) designate whether the proceeding is one of a category to be conducted informally according to the provisions of rules enacted under Sections 63-46b-4 and 63-46b-5, with citation to the applicable rule authorizing that designation, or formally according to ~~[the provisions of]~~ Sections

63-46b-6 to 63-46b-11 ;

(D) in the case of a formal adjudicative proceeding, and where respondent parties are known, state that a written response must be filed within 30 days of the date of the agency's notice if mailed, or within 30 days of the last publication date of the agency's notice, if published;

(E) if the adjudicative proceeding is to be formal, or if a hearing is to be held in an informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in a scheduled and noticed hearing may be held in default;

(F) if the adjudicative proceeding is to be informal, and a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party within the time prescribed by rule, state the parties' right to request a hearing and the time within which a hearing may be requested under the agency's rules; and

(G) give the name, title, mailing address, and telephone number of the presiding officer.

(4) When initial agency determinations or actions are not governed by this chapter, but agency and judicial review of those initial determinations or actions are subject to the provisions of this chapter, the request for agency action seeking review must be filed with the agency within the time prescribed by the agency's rules.

(5) For designated classes of adjudicative proceedings, an agency may, by rule, provide for a longer response time than allowed by this section, and may provide for a shorter response time if required or permitted by applicable federal law.

(6) Unless the agency provides otherwise by rule or order, applications for licenses filed under authority of Title 32A, Chapters 3, Packaging Agencies, 4, Public Liquor License, and 5, Private Club Liquor License are not considered to be a request for agency action under this chapter.

(7) If the purpose of the adjudicative proceeding is to award a license or other privilege as to which there are multiple competing applicants, the agency may, by rule or order, conduct a single adjudicative proceeding to determine the award of that license or privilege.

Section 14. Section **63-46b-6** is amended to read:

63-46b-6. Procedures for formal adjudicative proceedings -- Responsive pleadings.

EDITOR'S NOTES

(1) In all formal adjudicative proceedings, unless modified by rule according to Subsection 63-46b-3 (5), the respondent, if any, shall file and serve a written response signed by the respondent or ~~his~~ the respondent's representative within 30 days of the mailing date or last date of publication of the notice of agency action or the notice under Subsection 63-46b-3 (3)(d), which shall include:

- (a) the agency's file number or other reference number;
- (b) the name of the adjudicative proceeding;
- (c) a statement of the relief that the respondent seeks;
- (d) a statement of the facts; and
- (e) a statement summarizing the reasons that the relief requested should be granted.

(2) ~~The response shall be filed with the agency and one copy shall be sent by mail to each party~~ The respondent shall send a copy of the response filed under Subsection (1) to each party.

(3) The presiding officer, or the agency by rule, may permit or require pleadings in addition to the notice of agency action, the request for agency action, and the response. All ~~papers~~ documents permitted or required to be filed shall be filed with the agency and one copy shall be sent ~~by mail~~ to each party.

Section 15. Section **63-46b-9** is amended to read:

63-46b-9. Procedures for formal adjudicative proceedings -- Intervention.

(1) 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 file number or other reference number;
- (b) the name of the proceeding;
- (c) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law; and
- (d) a statement of the relief that the petitioner seeks from the agency.

(2) The presiding officer shall grant a petition for intervention if ~~he~~ the presiding officer 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.

(3) (a) Any order granting or denying a petition to intervene shall be in writing and ~~sent by mail~~ mailed 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 the conditions at any time after the intervention.

Section 16. Section **63-46b-10** is amended to read:

63-46b-10. Procedures for formal adjudicative proceedings -- Orders.

In formal adjudicative proceedings:

(1) Within a reasonable time after the hearing, or after the filing of any posthearing ~~papers~~ documents permitted by the presiding officer, or within the time required by any applicable statute or rule of the agency, the presiding officer shall sign and issue an order that includes:

(a) a statement of the presiding officer's findings of fact based exclusively on the evidence of record in the adjudicative proceedings or on facts officially noted;

(b) a statement of the presiding officer's conclusions of law;

(c) a statement of the reasons for the presiding officer's decision;

(d) a statement of any relief ordered by the agency;

(e) a notice of the right to apply for reconsideration;

(f) a notice of any right to administrative or judicial review of the order available to aggrieved parties; and

(g) the time limits applicable to any reconsideration or review.

(2) The presiding officer may use ~~his~~ the presiding officer's experience, technical competence, and specialized knowledge to evaluate the evidence.

(3) ~~No~~ A finding of fact that was contested may not be based solely on hearsay evidence

unless that evidence is admissible under the Utah Rules of Evidence.

(4) This section does not preclude the presiding officer from issuing interim orders to:

- (a) notify the parties of further hearings;
- (b) notify the parties of provisional rulings on a portion of the issues presented; or
- (c) otherwise provide for the fair and efficient conduct of the adjudicative proceeding.

Section 17. Section **63-46b-12** is amended to read:

63-46b-12. Agency review -- Procedure.

(1) (a) If a statute or the agency's rules permit parties to any adjudicative proceeding to seek review of an order by the agency or by a superior agency, the aggrieved party may file a written request for review within 30 days after the issuance of the order with the person or entity designated for that purpose by the statute or rule.

(b) The request shall:

- (i) be signed by the party seeking review;
- (ii) state the grounds for review and the relief requested;
- (iii) state the date upon which it was mailed; and
- (iv) be ~~sent by mail~~ mailed to the presiding officer and to each party.

(2) (a) Within 15 days of the mailing date of the request for review, or within the time period provided by agency rule, whichever is longer, any party may file a response with the person designated by statute or rule to receive the response. ~~[One copy of the response shall be sent by mail]~~

(b) The party who files a response under Subsection (2)(a) shall mail a copy of the response to each of the parties and to the presiding officer.

(3) If a statute or the agency's rules require review of an order by the agency or a superior agency, the agency or superior agency shall review the order within a reasonable time or within the time required by statute or the agency's rules.

(4) To assist in review, the agency or superior agency may by order or rule permit the parties to file briefs or other ~~[papers]~~ documents, or to conduct oral argument.

(5) Notice of hearings on review shall be mailed to all parties.

(6) (a) Within a reasonable time after the filing of any response, other filings, or oral argument, or within the time required by statute or applicable rules, the agency or superior agency shall issue a written order on review.

(b) The order on review shall be signed by the agency head or by a person designated by the agency for that purpose and shall be mailed to each party.

(c) The order on review shall contain:

(i) a designation of the statute or rule permitting or requiring review;

(ii) a statement of the issues reviewed;

(iii) findings of fact as to each of the issues reviewed;

(iv) conclusions of law as to each of the issues reviewed;

(v) the reasons for the disposition;

(vi) whether the decision of the presiding officer or agency is to be affirmed, reversed, or modified, and whether all or any portion of the adjudicative proceeding is to be remanded;

(vii) a notice of any right of further administrative reconsideration or judicial review available to aggrieved parties; and

(viii) the time limits applicable to any appeal or review.

Section 18. Section **63-46b-13** is amended to read:

63-46b-13. Agency review -- Reconsideration.

(1) (a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63-46b-12 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be ~~sent by mail~~ mailed to each party by the person making the request.

(3) (a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

Section 19. Section **63-46b-15** is amended to read:

63-46b-15. Judicial review -- Informal adjudicative proceedings.

(1) (a) The district courts have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings, except that the juvenile courts have jurisdiction over all state agency actions relating to:

(i) the removal or placement of children in state custody;

(ii) the support of children under Subsection (1)(a)(i) as determined administratively under Section 78-3a-906 ; and

(iii) substantiated findings of abuse or neglect pursuant to Section 62A-4a-116.5.

(b) Venue for judicial review of informal adjudicative proceedings shall be as provided in the statute governing the agency or, in the absence of such a venue provision, in the county where the petitioner resides or maintains [~~his~~] the petitioner's principal place of business.

(2) (a) The petition for judicial review of informal adjudicative proceedings shall be a complaint governed by the Utah Rules of Civil Procedure and shall include:

(i) the name and mailing address of the party seeking judicial review;

(ii) the name and mailing address of the respondent agency;

(iii) the title and date of the final agency action to be reviewed, together with a [~~duplicate~~] copy, summary, or brief description of the agency action;

(iv) identification of the persons who were parties in the informal adjudicative proceedings that led to the agency action;

(v) a copy of the written agency order from the informal proceeding;

(vi) facts demonstrating that the party seeking judicial review is entitled to obtain judicial review;

(vii) a request for relief, specifying the type and extent of relief requested; and

(viii) a statement of the reasons why the petitioner is entitled to relief.

(b) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.

(3) (a) The district court, without a jury, shall determine all questions of fact and law and any constitutional issue presented in the pleadings.

(b) The Utah Rules of Evidence apply in judicial proceedings under this section.

Section 20. Section **63-46b-23** is enacted to read:

63-46b-23. Electronic records and conversion of written records by governmental agencies.

A governmental agency may make rules regarding electronic records and conversion of written records as prescribed by Title 46, Chapter 4, Part 5, Electronic Records in Government Agencies.

End of Enrolled Copy of H.B. 27

REAUTHORIZATION OF ADMINISTRATIVE RULES

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: David Ure

This act is required by the Administrative Rulemaking Act. It reauthorizes all state agency administrative rules except those enumerated. This act takes effect on May 1, 2001.

This act enacts uncodified material.

Be it enacted by the Legislature of the state of Utah:

Section 1. **Rules authorized.**

All rules of Utah state agencies are reauthorized, except R156-55b-102(2), Commerce, Occupational and Professional Licensing, Electricians Licensing Rules, Definitions and Commerce, R156-55C-102(3) Construction Trade Licensing Act, Plumbers Licensing Rules, Definitions.

Section 2. **Effective date.**

This act takes effect on May 1, 2001.

End of the Editor's Notes Section

SPECIAL NOTICES

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT COMMUNITY DEVELOPMENT, LIBRARY

PUBLIC NOTICE OF AVAILABLE UTAH STATE PUBLICATIONS

The Utah State Library Division has made available Utah State Publications List No. 01-05, dated March 2, 2001 (<http://www.state.lib.ut.us/01-05.html>). For a copy 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; or view them on the World Wide Web at the address above.

DEPARTMENT OF HEALTH HEALTH CARE FINANCING

PUBLIC NOTICE UTAH MEDICAID HANDLING OF NON-EMERGENCY TRANSPORTATION SERVICES

Beginning April 16, 2001, non-emergency transportation for Medicaid recipients will be handled through PickMeUp Medical Transport, Inc. Medicaid recipients qualifying for transportation must call **1-888-822-1048** to request services. The criteria for qualifications to receive transportation services remains unchanged.

1. The transportation must be for a medical service.
2. The recipient must have no vehicle or no access through public transportation.
3. Where public transportation is available, the recipient must be physically unable to ride public transportation as certified by a physician.

This change does not affect those using Flextrans or public bus passes. Those programs remain unchanged and are not part of the brokered system. Administrative travel services authorized through eligibility workers will remain unchanged.

Questions regarding this change may be directed to Don Hawley at the Division of Health Care Financing by phone at (801) 538-6483.

End of the Special Notices Section

Notices of Proposed Rules Begins on the Following Page

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 February 16, 2001, 12:00 a.m., and March 1, 2001, 11:59 p.m., are included in this, the March 15, 2001, 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 April 16, 2001. 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 July 13, 2001, 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.

Agriculture and Food, Animal Industry
R58-17
 Aquaculture and Aquatic Animal Health

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 23534

FILED: 02/23/2001, 15:37

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The intent of this rule is to establish a program for the registration and fish health monitoring of aquaculture and fee-fishing facilities. Changes are being made to this rule to establish the correct procedures for the removal, disposal or importation of live or dead aquatic animals.

SUMMARY OF THE RULE OR CHANGE: Add and change text to clarify the intent of the rule concerning the removal, disposal or importation of live or dead aquatic animals. Included in this rule are the references pertaining to these changes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 4-37-101 and 4-37-503, and Subsection 4-2-2(j)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There is no anticipated cost or savings to state budget because the cost is an assessment to the owners for Certificate of Registration.

❖LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government because the cost is an assessment to the owners for Certificate of Registration.

❖OTHER PERSONS: There is a \$30 fee for a Certificate of Registration for fee-fishing facilities and \$150 fee for aquaculture facilities. In addition, any violation of or failure to comply with any provision of this rule may be grounds for issuance of citations and levying of fines; the maximum cost would be \$5,000.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is a \$30 fee for a Certificate of Registration for fee-fishing facilities and \$150 fee for aquaculture facilities. In addition, any violation of or failure to comply with any provision of this rule may be grounds for issuance of citations and levying of fines; the maximum cost would be \$5,000.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The impact on businesses would be the fee charged for the Certificate of Registration.

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

Agriculture and Food
 Animal Industry
 350 North Redwood Road
 PO Box 146500
 Salt Lake City, UT 84114-6500, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kent Hauck at the above address, by phone at (801) 538-7025, by FAX at (801) 538-4949, or by Internet E-mail at agmain.khauck@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 04/16/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 04/17/2001

AUTHORIZED BY: Cary G. Peterson, Commissioner

R58. Agriculture and Food, Animal Industry.**R58-17. Aquaculture and Aquatic Animal Health.****R58-17-1. Authority and Purpose.**

(A) This rule is promulgated under the authority of Section 4-37-101 (et seq.) Amendments, Subsection 4-2-2(j) and 4-37-503.

(B) It is the intent of this rule to establish a program for the registration and fish health monitoring of aquaculture facilities, fee-fishing facilities, public aquaculture facilities, public fishery resources, private fish ponds, institutional facilities, private stocking, short-term fishing events and displays. This rule also addresses the importation (entry) of aquatic animals (including fish, fish eggs, gametes) into the State of Utah and establishes requirements for health approval of aquatic animals and their sources. The program is based on the monitoring of facility operations and aquatic animal movements to prevent the exposure to and spread of pathogens or diseases which adversely affect both cultured and wild aquatic animal stocks.

(C) Persons engaged in any of the aquatic animal operations listed in R58-17-1(B) must comply with the rules concerning site selection and species control under Department of Agriculture and Food 4-37-201(3) and 4-37-301(3) and Department of Natural Resources rules R657-3 and R657-16.

(D) This rule is part of a statewide aquaculture disease control effort that includes procedures and policies adopted by the Fish Health Policy Board.

R58-17-2. Definitions.

(A) The following terms are defined for the purpose of this rule:

(1) "Aquaculture" means the controlled cultivation of aquatic animals. In this rule, the word "aquaculture" refers to commercial aquaculture.

(2)(a) "Aquaculture facility" means any tank, canal, raceway, pond, off-stream reservoir, fish processing plant or other structure used for aquaculture. "Aquaculture facility" does not include any public aquaculture facility or fee fishing facility, as defined in this rule.

(b) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain into different drainages, are considered separate aquaculture facilities regardless of ownership.

(3)(a) "Aquatic animal" means a member of any species of fish, mollusk, crustacean, or amphibian.

(b) "Aquatic animal" includes a gamete of any species listed in definitions under Section (3)(a).

(4) "Brokers and dealers" are individuals or companies that are in the business of buying, selling, exchanging or transferring live aquatic animals without being actively involved in the culture, rearing or growth of the animals. This includes a person or company who rears aquatic animals, but also buys and sells additional aquatic animals without rearing them pursuant to R58-17-14(D).

(5) "Certificate of Registration (COR)" means an official document which registers facilities with the Department of Agriculture and Food or which registers facilities and events with the Division of Wildlife Resources pursuant to R58-17-4. The purpose of the document is to establish the legal description of the facility, the species of aquatic animals reared and to grant the authority to engage in the described activity.

(6) "Department" means the Department of Agriculture and Food with appropriate regulatory responsibility pursuant to R58-17-4(A)(1) in accordance with the provisions of Sections 4-2-2 and 4-37-104, Utah Code.

(7) "Division" means the Division of Wildlife Resources in the Department of Natural Resources with the appropriate regulatory responsibility pursuant to R58-17-4(A)(2) in accordance with the provisions of Sections 4-2-2 and 4-37-104, Utah Code.

(8) "Egg only sources" refers to a separate category of salmonid fish health approval that allows for the purchase of "fish eggs only" from a facility pursuant to R58-17-15(B)(5) and (D)(1). This category makes the distinction between those pathogens that are vertically transmitted (from parent to offspring through the egg, i.e., *Renibacterium salmoninarum* (BKD), IHNV, IPNV, OMY, VHSV) and those horizontally transmitted (from one fish to another by contact or association, i.e., *Aeromonas salmonicida*, Asian tapeworm, *Ceratomyxa shasta*, PKX, *Myxobolus cerebralis* (whirling disease), and *Yersinia ruckeri*).

(9) "Emergency prohibited pathogen" is a pathogen that causes high morbidity and high mortality, is exotic to Utah, and requires immediate action. This type of pathogen generally cannot be treated and is controlled through avoidance, eradication, and disinfection (see R58-17-20).

(10) "Emergency Response Procedures" are procedures approved by the Fish Health Policy Board to be activated any time an emergency prohibited or prohibited pathogen is reported pursuant to R58-17-9 and R58-17-15(D)(6).

(11) "Emergency response team" means teams as approved by the Fish Health Policy Board responsible for developing and executing action plans to respond to and report findings of emergency prohibited or prohibited pathogens pursuant to R58-17-10(A)(1) and R58-17-10(B)(1).

(12) "Entry Permit" means an official document issued by the Department which grants permission to the permit holder to import aquatic animals into Utah. An entry permit is issued for a 30 day period and stipulates which species, size or age, weight and source of aquatic animals are to be imported.

(13) "Fee fishing facility" means a body of water used for holding or rearing aquatic animals for the purpose of providing fishing for a fee or for pecuniary consideration or advantage.

(14) "Fish health approved/approval" means a system of procedures and processes which allows an assessment of the disease history of a facility or population of aquatic animals and which

grants a statistical assurance that neither "emergency prohibited" nor "prohibited" pathogens are present. Fish Health Approval status is granted to COR holders in Utah and to aquatic animal sources outside of Utah, all of which have satisfactorily completed health approval assessment requirements pursuant to R58-17-15, have been assigned a health approval number, and placed on the fish health approval list (R58-17-13(C)). Fish health approval is necessary before buying, selling or brokering aquatic animals within Utah or importing aquatic animals into Utah.

(15) "Fish Health Policy Board" means the board created pursuant to Amendment 4-37-503.

(16) "Fish processing plant" means a facility pursuant to R58-17-2(A)(2)(a), R58-17-13(G) and (H), and R58-17-17 used for receiving whole dead, eviscerated fresh or frozen [fish]salmonids or other live and dead aquatic animals as approved on the COR for processing.

(17) "Import/importation" means to bring live aquatic animals, by any means into the State of Utah from any location outside the state and to subsequently possess and use them for any purpose.

(18) "Institutional aquaculture" means aquaculture engaged in by any institution of higher learning, school, or other educational program.

(19) "Ornamental fish" means any species of aquatic animals that are reared or marketed for their beauty or exotic characteristics, rather than for consumptive or recreational use. Tropical fish, goldfish and koi are included in the category of ornamental fish. This does not include those species of aquatic animals listed as prohibited or controlled in Department of Natural Resources rule R657-3. Ornamental fish are not regulated under rules R58-17 or R657-3. If the Department or Division determines that an introduction of ornamental fish poses a disease risk for aquatic animals, then all requirements under this rule apply.

(20)(a) "Private fish pond" means a body of water where privately owned aquatic animals are propagated or kept.

(b) "Private fish pond" does not include any aquaculture facility or fee fishing facility.

(21) "Procedures for the Timely Reporting of Pathogens" means procedures approved by the Fish Health Policy Board for the timely reporting of emergency prohibited, prohibited, or reportable pathogens from any source in Utah or from any out-of-state health approved source pursuant to R58-17-9 and R58-17-15(D)(5).

(22) "Prohibited pathogen" is a pathogen that can cause high morbidity or high mortality, may be endemic to Utah, and requires action in a reasonable time frame. A prohibited pathogen is generally very difficult or impossible to treat and is controlled through avoidance, eradication, and disinfection (see R58-17-20).

(23)(a) "Public aquaculture facility" means a tank, canal, raceway, pond, off-stream reservoir, or other structure used for aquaculture by the Division, the U.S. Fish and Wildlife Service, or an institution of higher education.

(b) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain into different drainages, are considered separate public aquaculture facilities.

(24) "Public fishery resource" means aquatic animals produced in public aquaculture facilities and wild and free ranging populations of aquatic animals in the surface waters of the state.

(25) "Quarantine" means the restriction of movement of live aquatic animals regardless of age and of all equipment and hauling trucks into or from an area designated by the Commissioner of

Agriculture or State Veterinarian pursuant to R58-17-10 and Agricultural code 4-31-16 and 17.

(26) "Reportable pathogen" is a pathogen that generally is not a problem if good management practices are followed. It is possible to prevent or treat a reportable pathogen. Reportable pathogens are not prohibited in Utah but may be prohibited in some other states or countries. These pathogens are of concern because of their possible effect on commerce in aquatic animals (see R58-17-20).

(27) "Source" means the rearing or holding environment of an aquatic animal.

(28) "Unregulated pathogen" is a pathogen that is not regulated in Utah. Unregulated pathogens include all pathogens not classified as either emergency prohibited, prohibited, or reportable. Reporting of these pathogens to the Fish Health Policy Board is not required (see R58-17-20).

R58-17-3. Penalties.

Any violation of or failure to comply with any provision of this rule or R657-16 or any specific requirement contained in a certificate of registration or entry permit issued pursuant to this rule or R657-16 may be grounds for issuance of citations, levying of fines, revocation of the certificate of registration or denial of future certificates of registration pursuant to Subsections 4-2-2(1)(f) and 4-2-15(1), as determined by the Commissioner of Agriculture and Food and pursuant to Sections 23-19-9 and 23-13-11, as determined by the Director of the Division of Wildlife Resources.

R58-17-4. Certificate of Registration (COR) Required.

(A) Activities requiring a COR:

(1) A COR, issued by the Department, is required before a person may engage in the following activities within the State of Utah:

- (a) Operate an aquaculture facility.
- (b) Operate a fee-fishing facility.
- (c) Operate a fish processing plant.

(2) A COR, issued by the Division, is required for operation of the following activities within the State of Utah:

- (a) public aquaculture facilities;
- (b) private fish ponds (R657-16-10);
- (c) institutional aquaculture facilities (R657-16-13);
- (d) short term fishing events (R657-16-11);
- (e) private stocking (R657-16-12);
- (f) displays (R657-16-14).

(3) One of the above CORs must be in place prior to the issuance of an entry permit for importing live aquatic animals into Utah.

(B) No refunds may be given. Sales of CORs are final.

R58-17-5. Species Allowed.

(A) Pursuant to Department of Natural Resources rule R657-3, only those species approved by the Wildlife Board and listed on the COR may be used in conjunction with the activity listed on the COR.

(B) Pursuant to 4-37-105(1), 4-37-201(3)(B) and 4-37-301(3)(B) the Department shall coordinate with the Division to determine which species the holder of a COR may propagate, possess, transport or sell.

(C) The Department will insure that the species described on CORs and entry permits issued by the Department are those approved by the Division.

R58-17-6. Qualifying Waters.

(A) An aquaculture facility, fee-fishing facility or private fish pond may not be developed on natural lakes, natural flowing streams, or reservoirs constructed on natural stream channels. Other water, including canals, offstream reservoirs, and excavated ponds or raceways will be considered for use as an aquaculture or fee-fishing facility.

(B) During the COR application process, the Department shall coordinate with the Division to determine the suitability of the proposed site pursuant to R58-17-6(A), 4-37-111, 4-37-201(3) and 4-37-301(3).

R58-17-7. Screens Required.

(A) Screens or other devices that are designed to prevent the movement of fish into or out of an aquaculture facility, fee-fishing facility, public aquaculture facility, private fish pond, institutional aquaculture facility, short term fishing event or display must be placed at the inflow and outflow. The presence of adequate screening or other devices is a precondition to issuance or renewal of CORs.

(B) As part of the COR issuance process, the Department or the Division shall make site visits and determine the adequacy of screening.

(C) During and following the COR application process, the Department or Division may inspect screening or other devices in their respective areas of responsibility to assure compliance with Subsections R58-17-7(A) and (B) during reasonable hours.

(D) It is the responsibility of the COR holder to report to the Department or Division, depending on which agency issued the COR, all escapements of aquatic animals from facilities. This is to be done within 72 hours of the loss or knowledge of the loss. The report shall include facility names, date of loss, estimate of number of aquatic animals lost, names of public water the aquatic animals escaped into, remedial actions taken, and plans for future remedial action. The COR holder and/or facility operator will bear all costs for remedial actions. The Department or Division shall notify all agencies and affected parties within two working days. The agency having responsibility may suspend all activities at the facility, including aquatic animal imports, transfers, sales, fishing, etc., until the investigation and remedial actions are completed.

R58-17-8. Application and Renewal of Certificates of Registration (CORs).

(A) Application process.

(1) For application procedures pursuant to R58-17-4, contact the Fish Health Program of the Department at 350 N. Redwood Road, Box 146500, Salt Lake City, UT 84114-6500 or the Wildlife Registration Office of the Division at 1594 West North Temple, Suite 2110, Salt Lake City, UT 84114-6301.

(2) The application form must be completed and sent to the appropriate address with the required fee. Forms that are incomplete, incorrect or not accompanied by the required fee may be returned.

(3) Department or Division approval of the site and species will be done at the earliest possible date. The Department will make every effort to process applications submitted to it within two weeks pursuant to 4-37-201(3) and 4-37-301(3). Pursuant to R657-16-4, applications submitted under the jurisdiction of the Division require up to 45 days for processing, except for short-term fishing events, which require up to 10 days.

(4) Upon approval, a written COR and COR number will be issued. This certificate will be sent to the facility owner or operator and should be filed for 2 years pursuant to Section 4-37-110.

(5) If the application is denied, a written explanation will be sent to the applicant.

(B) Renewal process.

(1) All CORs are valid for the calendar year issued and will remain valid until January 31 of the following year unless renewed sooner.

(2) CORs are renewed annually by submitting a completed application and the required fee to the Department or Division, and by complying with all other applicable renewal criteria.

(3) Failure to renew the COR annually may result in the loss of health approval, denial of future CORs, and the removal or destruction pursuant to R58-17-13(G) of the live or dead aquatic animals at the facility. Removal or disposal of live or dead aquatic animals is the responsibility of the owner and shall be done by means acceptable to the Department.

(C) CORs are not transferrable.

R58-17-9. Reporting Fish Diseases.

Persons involved in aquaculture and being regulated by this rule, having knowledge of the existence in the state of any of the diseases currently on the pathogen list, Subsection R58-17-15(D)(2), (3), and (4), shall report it to the Department, Fish Health Program or the Division, Aquatics Section. The Department or Division will follow the Procedures for the Timely Reporting of Pathogens and the Emergency Response Procedures developed by the Fish Health Policy Board in determining reporting and response procedures. All confirmed findings of pathogens pursuant to R58-17-15(D)(2), (3), and (4), determined from such incidents or from inspections or diagnostic work initiated by the Department or the Division, will be reported to the Fish Health Policy Board.

R58-17-10. Quarantine of Aquatic Animals and Premises.

(A) If evidence exists that the aquatic animals of any facility are infected with or have been exposed to pathogens pursuant to R58-17-15(D)(2) and (3), then a quarantine may be imposed by the Commissioner of Agriculture or the State Veterinarian. This action may be reviewed by the Fish Health Policy Board for recommendations to the Department.

(1) Lifting of the quarantine imposed on a facility infected with or exposed to emergency or prohibited pathogens requires a minimum of two negative tests, six months apart, of all lots of fish to verify the absence of the pathogen. In addition, the Department may require disinfection of the facilities and equipment in accordance with current medical knowledge of the organism, American Fisheries Society Blue Book procedures, and guidelines set forth by the Emergency Response Team.

(2) If the Department has reasonable evidence that the contagion is still present pursuant to R58-17-11, then quarantine, closure, or other measures shall be imposed.

(B) A quarantine may be imposed by the Commissioner of Agriculture or the State Veterinarian where aquatic animals are possessed, transported or transferred in violation of this rule, wildlife rules, or statute and consequently pose a possible disease threat; or where a quarantine is reasonably necessary to protect aquatic animals within the state. This action may be reviewed by the Fish Health Policy Board for recommendations to the Department.

(1) Quarantines imposed on facilities for rule or statute violations or for purposes of protecting aquatic animals may be lifted once sufficient evidence is presented to the State Veterinarian's satisfaction that infection is not present at the facility. In addition, the Department may require disinfection of the facilities and equipment in accordance with current medical knowledge of the organism, American Fisheries Society Blue Book procedures, and guidelines set forth by the Emergency Response Team.

(2) If the Department has reasonable evidence that the contagion is present pursuant to R58-17-11, then quarantine, closure, or other measures shall be imposed.

(C) Any person under quarantine who delivers aquatic animals from health-approved sources for other public or private aquaculture facilities may, with written permission from the Department, use their hauling trucks if the operator either houses the truck off the quarantined facility, or disinfects the truck according to Department recommendations each time it leaves the quarantined facility.

R58-17-11. Handling of Aquatic Animals and Premises Confirmed to Be Infected With a Listed Pathogen in R58-17-15(D).

(A) Where any facility or group of aquatic animals is confirmed to be infected with one or more of the pathogens listed in R58-17-15(D), the Commissioner of Agriculture and Food or State Veterinarian may place a quarantine and take steps to prevent the spread of the pathogen and to eliminate it from the facility. These actions may be reviewed by the Fish Health Policy Board for recommendations to the Department. The Department or Division, in their respective areas of responsibility, may take one or more of the following actions as listed below, depending on which pathogen is involved and the potential effects of the pathogen on the receiving water, neighboring aquaculture facilities or the public fishery resource.

(1) Destruction and disposal of all infected and exposed aquatic animals.

(2) Cleaning and disinfection or disposal of all handling equipment.

(3) Testing is required of all lots of fish, which may be at the owner's expense, to detect the presence or spread of the pathogen. This may include the use of sentinel fish. After two negative tests, six months apart, the quarantine shall be reassessed, possibly released, and/or other measures may be imposed. Following removal of the quarantine, full restocking can begin.

(4) The infected aquatic animals may be allowed to remain on the premises through the production cycle depending on the pathogen involved and its potential effects on adjacent animals. All stocks within the facility shall be tested every 6 months or sooner to determine if the pathogen persists in infecting the aquatic animals. At the end of the production cycle, then testing shall be done at least annually. If the pathogen is not found after two

consecutive annual inspections, then testing may revert to the original requirements for the facility. If security of the facility cannot or is not being maintained, immediate destruction of the stocks may be required.

R58-17-12. Statement of Variances.

Circumstances may arise which cannot be adequately addressed or resolved with this rule. The Fish Health Policy Board may grant specific variances to the rule if the following conditions are met:

- (A) The variance is based on scientifically sound information and rationale.
- (B) The variance will cause no threat to other aquaculture operations, state or private, or to wild fish populations.
- (C) The variance is documented appropriately.

R58-17-13. Importation of Aquatic Animals or Aquaculture Products Into Utah.

(A) An official ENTRY PERMIT is required to import live aquatic animals or their gametes into Utah from any location outside the state. This permit is in addition to the COR for operation of the facility. The entry permit can be obtained at no charge by contacting the Department, Fish Health Program and providing the following information:

- (1) Name, address, phone number and COR number of importer.
- (2) Species, size and/or number of aquatic animals or eggs to be imported.
- (3) Name and health approval number of sources, origin of aquatic animals/eggs, transfer history, and approximate date of shipment.
- (4) For international shipments, a certificate of veterinary inspection from the source must be obtained by the importer indicating that known nuisance species are not found in the water source.

(B) Each shipment of live aquatic animals/eggs must be approved individually. A copy of the entry permit will be sent to the requesting party and a copy must accompany the shipment. The permit holder shall allow one to two weeks for the Department to verify the health approval status of the source and to verify approved species status pursuant to R58-17-5.

(C) All shipments of live aquatic animals must originate from sources that have been health approved by the Department pursuant to R58-17-15(A)(2) and assigned a fish health approval number. A list of approved sources is maintained by the Department, but cannot be published due to frequent updates. Information on approved sources may only be obtained by contacting the Department Fish Health Program.

(D) All importations must be species that have been approved by the Wildlife Board and the Division pursuant to R657-3 and 4-37-105(1).

(E) To import live grass carp (*Ctenopharyngodon idella*), a COR and an ENTRY PERMIT are required. In addition, the fish must also be verified as being triploid (sterile) by a source acceptable to the Department. A U. S. Fish and Wildlife Service triploid verification form must be obtained from the supplier as required in R657-16-7. Both this form and the Department's statement verifying treatment or testing for the Asian tapeworm must be on file with the Department prior to shipment of the fish.

Copies of the entry permit, treatment and testing statement and the triploid verification forms must accompany the fish during transit. The statement verifying treatment or testing is also required for all aquatic animal species that are known or reported hosts or carriers of the Asian tapeworm.

(F) The State Veterinarian may require treatment or testing of any aquatic animal species in accordance with current medical knowledge before importation.

(G) Whole dead and eviscerated fresh or frozen salmonid fish or live aquatic animals pursuant to R58-17-2(A)(16) may be imported into Utah for processing at a fish processing plant without an Entry Permit. Live salmonid fish may be imported into and transported within Utah for processing at a fish processing plant without an Entry Permit, but must be killed upon release from the transport vehicle and may not be held live at the fish processing plant. Waste products, i.e., brine shrimp cysts, carcasses, viscera and waste water, must be incinerated, buried with quick lime, composted, digested, or disposed of by means acceptable to the Department to deter spread of pathogens and non-native species pursuant to R657-3 by water or animals. The Department may apply the requirements in this section to other species of aquatic animals and pathogens if future needs arise.

(H) Placement of dead fish, fish parts, or fish waste products from a fish processing plant, or live or dead aquatic animals from any facility into public waters [~~for any reason~~] is illegal. Proper disposal is the responsibility of the processor/owner/broker pursuant to R58-17-13(G).

(I) All transport vehicles, carrying aquatic animals imported into Utah or transported through Utah pursuant to R58-17-14(C), must have proper documentation. The lack of proper documentation and/or the findings of an inspection may result in entry denial, fines, or other Department actions. All inspection costs will be born by the importer.

R58-17-14. Buying, Selling, and Transporting Aquatic Animals.

(A) Buying aquatic animals:

Live aquatic animals, except ornamental fish, may be purchased or acquired only by persons who have a valid COR to possess such animals. This applies to separate facilities owned by the same individual. Live aquatic animals must be purchased only from sources that either are located in-state and have a valid COR for commercial aquaculture or are located outside of Utah. In both cases, the sources must also be on the current fish health approval list.

(B) Selling aquatic animals:

Live aquatic animals, except ornamental fish, may be sold only by a person or entity located in-state who possesses a valid COR for aquaculture or by a person located outside of Utah. Current listing for each species on the fish health approval list is also required. Within Utah, an aquaculture facility operator may only sell or transfer live aquatic animals to a person or entity, which has been issued a valid COR to possess such animals.

(C) Transporting aquatic animals:

(1) Any person possessing a valid COR may transport the live aquatic animals specified on the COR to their facility or approved site.

(2) All transfers or shipments of live aquatic animals within Utah, except ornamental fish, must be accompanied by documentation of the source and destination, including:

(a) Name, address, phone number, COR number and COR expiration date, fish health approval number and expiration date of source and transfer history.

(b) Species, size, number or weight being shipped.

(c) Name, address, phone number, COR number and COR expiration date of the destination.

(d) Date of transaction.

(3) Live aquatic animals may be shipped through Utah without a COR, provided that the animals will not be sold, released or transferred, the products remain in the original container, water from the out-of-state source is not exchanged or released, and the shipment is in Utah no longer than 72 hours. Proof of legal ownership, origin of aquatic animals and destination must accompany the shipment.

(4) Any person who hauls fish may transport a species other than those listed on their COR provided the source facility and destination both have a valid COR to possess that species.

(5) No person may move or cause to be moved aquatic animals from a facility known to be exposed to or infected with any of the diseases currently on the pathogen list, R58-17-15(D)(2) through (4), without first reporting it to the appropriate regulating agency pursuant to R58-17-9 and receiving written authorization to move the aquatic animals.

(D) Brokers and Dealers:

(1) Brokers and Dealers must follow the same requirements that other producers do with respect to importation, fish health approval of their facility and their source facilities and assuring that live sales are only made to those with valid CORs.

(2) To gain fish health approval, brokers and dealers must obtain health approval for all their source facilities.

R58-17-15. Aquatic Animal Health Approval.

(A) Live aquatic animals, except ornamental fish, may be acquired, purchased, sold or transferred only from sources which have been granted health approval by the Department and assigned a fish health approval number. This applies to separate facilities owned by the same individual and to both in-state and out-of-state facilities.

(1) Within Utah, the Department shall be responsible for granting health approval and assigning an aquatic animal health approval number to aquaculture facilities, fee-fishing facilities and any out-of-state sources pursuant to amendment 4-37-501(1). The Division shall be responsible for granting health approval and assigning an aquatic animal health approval number to public aquaculture facilities within the state, private fish ponds within the state, and wild populations of aquatic animals in waters of the state pursuant to amendment 4-37-501(1).

(2) The Department is responsible for granting health approval for the importation into or transportation through Utah of aquatic animals.

(3) The Fish Health Policy Board may review health approval actions of the Department and/or the Division.

(B) Basis for Health Approval:

(1) Health approval for salmonid species is based on the statistical attribute sampling of fish from each lot on the facility in accordance with current American Fisheries Society Blue Book procedures. This shall require minimum sampling at the 95% confidence level, assuming a 5% carrier incidence for the prohibited

pathogens, pursuant to R58-17-15(D)(2) and (3). Health approval is applied to the entire facility, not individual lots of fish.

(2) All lots of fish shall be sampled. Approval will be withheld if a pathogen listed under R58-17-15(D)(2) or (3) is detected in any of the lots.

(3) For brood facilities, lethal sampling may be required on the brood fish if the following conditions are not met:

(a) Progeny are available at the facility for lethal sampling.

(b) A statistically valid sample of ovarian fluids from ripe females is tested.

(4) Collection, transportation and laboratory testing of the samples will follow standard procedures specified by the Department, the Division and the Fish Health Policy Board. Inspections will be conducted under the direction of an individual who has received certification by the American Fisheries Society as a fish health inspector.

(5) EGG ONLY sources - A facility which cannot gain full fish health approval because of a horizontally transmitted pathogen, may be approved to sell eggs provided they are free of the listed vertically transmitted pathogens pursuant to R58-17-15(D)(1) and are properly disinfected using approved methods prior to shipment. Eggs may be required to be from incubation units isolated from hatchery and open water supplies and to be from fish-free water sources.

(6) Health approval for warm water species is based on disease history information obtained from the producer, fish pathologists or other fish health professionals in the producer's state or locale. Standardized inspection protocols for warm water fish diseases have not been developed. The agency having responsibility will discuss the disease history of the facility with the producer, and then may contact local fish health professionals to identify any existing or potential disease problems.

(7) Under no circumstances shall health approval be granted to a facility using emergency prohibited or prohibited pathogen contaminated water as a source.

(C) Approval Procedures:

(1) Applicable to warm and cold water aquatic animals.

(a) To receive initial fish health approval, inspection reports or other evidence of the disease status of an aquaculture facility or public aquaculture facility must be submitted to the appropriate agency. For warm water aquatic animal approval, the "Application for Warm Water Species Fish Health Approval" form must be submitted for initial approval and for renewal pursuant to R58-17-15(B)(6). Initial approval also requires the applicant to include information on origins of the aquatic animals at the facility and their transfer histories. The same application materials shall be required annually for renewal of fish health approval for activities occurring between applications.

(b) Inspections are conducted pursuant to UCA amendment 4-37-502 to detect the presence of any prohibited pathogens listed under R58-17-15(D)(2) and (3). Overt disease need not be evident to disqualify a facility. To qualify for initial and renewal of aquatic animal health approval, evidence must be available verifying that any prohibited pathogens listed under R58-17-15(D)(2) and (3) are not present.

(c) Once the requirements for initial approval or renewal of approval have been met, the facility shall be added to the fish health approval list of the responsible agency and assigned a fish health approval number for the current year. Fish health approval of each

facility shall be reviewed annually for continuance on the lists maintained by the Department and the Division pursuant to R58-17-15(A)(1).

(d) The Department will report the confirmed results of annual inspections conducted at aquaculture facilities, fee fishing facilities, and out-of-state sources at each meeting of the Fish Health Policy Board.

(e) Public aquaculture facilities and wild brood stocks are included on the fish health approval list maintained by the Division. The Division will report the confirmed results of annual health inspections conducted at public aquaculture facilities, private ponds and wild populations of aquatic animals at each meeting of the Fish Health Policy Board.

(f) If all aquatic animals are removed from an approved facility for a period of three months or more, or if fish health approval is canceled or denied, then subsequent fish health approval will be granted only after the facility has completed the process for initial approval as outlined under R58-17-15(C).

(2) Applicable to cold water aquatic animals:

(a) For initial approval of new facilities, two inspections of the same lot, at least four months apart and negative for any prohibited pathogen pursuant to R58-17-15(D)(2) and (3), are required. The aquatic animals must have been on the facility at least six months prior to the first inspection.

(b) For initial approval of existing facilities, health inspection reports for a minimum of the previous two years, and facility disease history reports for up to the previous five years and five-year disease histories for all stocks imported to the facility are required.

(c) All lots of aquatic animals on the facility as well as any outside sources of these aquatic animals must be inspected for initial approval and for renewals pursuant to R58-17-15(B)(4).

(d) After initial approval, annual inspections shall be required to renew fish health approval. A two-month grace period is granted at the completion of the annual inspection for laboratory testing of samples and reporting of test results. Health inspection reports, the facility disease history for at least the previous year, and disease histories for at least the previous year for all stocks imported to the facility shall be required before each renewal.

(D) Prohibited and reportable pathogen list:

(1) Pathogens requiring some form of action are classified as either emergency prohibited, prohibited, or reportable. Those pathogens denoted by an asterisk (*) preceding the name will only be tested for if the fish or eggs originate from an area where the pathogen is found. Pathogens denoted by a double asterisk (**) after the name can only be transmitted in fish and not in the eggs, therefore permitting the special provisions for egg only sources provided in Sections R58-17-2(8) and R58-17-15(B)(5).

(2) Emergency prohibited pathogens.

(a) Infectious hematopoietic necrosis virus (IHNV).

(b) Infectious pancreatic necrosis virus (IPNV).

(c) Viral hemorrhagic septicemia virus (VHSV).

(d) *Oncorhynchus masou virus (OMV).

(3) Prohibited pathogens.

(a) Myxobolus cerebralis (pathogen that causes whirling disease)**.

(b) Renibacterium salmoninarum (pathogen that causes bacterial kidney disease (BKD)).

(c) *Ceratomyxa shasta (pathogen that causes the disease ceratomyxosis)**.

(d) Bothriocephalus (Asian tapeworm and cause of the disease bothriocephalosis).**

(e) *PKX (pathogen that causes proliferative kidney disease (PKD))**.

(4) Reportable pathogens.

(a) Yersinia ruckeri (pathogen that causes enteric redmouth)**.

(b) Aeromonas salmonicida (pathogen that causes furunculosis)**.

(c) Emerging fish pathogens (including any filterable agent or agent of clinical significance as determined by the Fish Health Policy Board).

(5) The Fish Health Policy Board Procedures for the Timely Reporting of Pathogens shall be followed if any emergency prohibited, prohibited, or reportable pathogen is found. Inspection for reportable pathogens is optional, but positive findings of these pathogens must be reported to the Fish Health Policy Board. Reporting of unregulated pathogens to the Fish Health Policy Board is not required.

(6) The Fish Health Policy Board Emergency Response Procedures shall be activated any time a confirmed finding or unconfirmed evidence of an emergency prohibited or prohibited pathogen is reported.

R58-17-16. Inspection of Records and Facilities.

(A) The following records must be maintained for a period of up to five years and be available for inspection during reasonable hours by the appropriate agency representative pursuant to R58-17-4.

(1) Records of purchases, acquisition, distribution, and production histories of live aquatic animals.

(2) CORs and entry permits.

(3) Valid identification of stocks, including origin of stocks.

(B) The appropriate agency representatives may conduct pathological or physical investigations at any registered facility pursuant to R58-17-4 during reasonable hours if there is cause to believe that a disease condition exists. Any laboratory testing that is necessary as a result of this investigation will not be at the owner's expense.

R58-17-17. Aquaculture Facilities.

(A) COR required:

A COR is required to operate an aquaculture facility. A separate COR and fee are required for each individual facility as defined under "aquaculture facility", Section 4-37-103(2)(a), regardless of ownership.

(B) Live aquatic animals may be sold or transferred:

The operator of an aquaculture facility with aquatic animal health approval may take the aquatic animals as approved on the COR from the facility at any time and offer them for sale. Within Utah, live aquatic animals can only be sold to other facilities which have a valid COR for that species. Fish Processing plants dealing with salmonids shall neither hold nor sell live salmonids pursuant to R58-17-2(A)(16).

(C) Fee-fishing facility and/or processing plant allowed:

The operator of an aquaculture facility may also operate a fee-fishing facility under the terms applicable to fee-fishing facilities in

Section R58-17-18 and/or a fish processing plant pursuant to R58-17-17 and R58-17-13(G) and (H), provided the fee-fishing facility or the fish processing plant is located at the site ~~[of]~~ and within one half mile distance from the aquaculture facility, contains only those species authorized on the COR for the aquaculture facility, and this activity is listed on the COR for the aquaculture facility.

(D) Receipts required:

Any sale, shipment or transfer of live fish from an aquaculture facility must be accompanied by a receipt with documentation of the source and destination. A receipt book will be provided by the Department upon request. Copies of all receipts will be submitted to the Department and will serve as the annual report of sales. The receipt book is to be used for in-state sales or transfers, and will contain the following information:

(1) Names, addresses, phone numbers, COR numbers, COR expiration dates, fish health approval numbers and expiration dates of sources.

(2) Number and weight being shipped, by species.

(3) Names, addresses and phone numbers of destinations.

(4) COR numbers and COR expiration dates for destinations (for in-state transfers only).

(5) Dates of transactions.

(6) Signature of seller.

(E) Annual reports required:

Annual reports of all sales, transfers, and purchases must be submitted to the Department as part of the COR renewal process, pursuant to Subsection R58-17-8(B)(2). A report form for all purchases or transfers into a facility will be provided by the Department.

(1) For all purchases, this report will contain the following information:

(a) Names, addresses, phone numbers, COR numbers and fish health approval numbers of sources.

(b) Number and weight by species.

(c) Names, addresses, phone numbers, COR numbers of the destinations.

(d) Dates of transactions.

(2) For all sales or transfers, copies of the receipt book transactions pursuant to R58-17-17(D), will be submitted to the Department.

(3) The records and reports must be submitted to the Department by ~~[January]~~ December 31 each year and must be received before a COR will be renewed.

(4) The report made by operators of fish processing plants shall contain source names, addresses, phone numbers, species names, and live or dead state for all purchases and transfers to and from the facility. The report shall address proper methods of disposal with dates and locations pursuant to R58-17-13(G) and (H). Brine shrimp processing plants shall prepare an annual report with the above information for non-Great Salt Lake brine shrimp or other aquatic invertebrates imported into Utah.

(F) Fees assessed:

A COR for an aquaculture facility shall be assessed a fee of \$150.00 during application and annually for renewal, pursuant to Section 4-37-301. Only fish processing plants that work with fin fish are assessed this fee.~~[For applicants who renew before December 31, a discount of \$25.00 will be allowed.]~~ The deadline

for COR renewal is ~~[January]~~ December 31. If the COR renewal application is not received by February 28, the COR will be no longer valid and regulatory action shall be initiated pursuant to R58-17-8(B)(3).

R58-17-18. Fee-Fishing Facilities.

(A) COR required:

A COR is required to operate a fee-fishing facility. A separate COR is necessary for separate fee-fishing facilities as defined under "aquaculture facility", Section 4-37-103(2)~~[(a)]~~, regardless of ownership.

(B) Live sales or transfers prohibited:

The operator of a fee-fishing facility may not sell, donate, or otherwise transfer live aquatic animals, except that the approved species may be transferred into the facility from an approved source.

(C) Fishing licenses not required:

A fishing license is not required to take aquatic animals from a fee-fishing facility.

(D) Receipts required:

To transport dead aquatic animals away from a fee-fishing facility, the operator must provide a receipt to the customer which contains the following information:

(1) Name, address, COR number, COR expiration date and phone number of fee-fishing facility.

(2) Date caught.

(3) Species and number of fish.

(E) Annual report required:

The operator of a fee-fishing facility must submit to the Department an annual report of all live aquatic animals purchased or acquired during the year. A report form for all purchases or transfers into a facility will be provided by the Department. This report must contain the following information:

(1) Names, addresses, phone numbers, fish health approval numbers of all sources and/or COR numbers and COR expiration dates.

(2) Number and weight by species.

(3) Dates of sales or transfers.

(4) Names, addresses, phone numbers, COR numbers and COR expiration dates of the destinations.

(F) Fees assessed:

A fee of \$30.00 shall be required with the application for the fee-fishing COR. This fee shall be required annually with the reports for COR renewal, pursuant to 4-37-301.~~[For applicants who renew before December 31, a discount of \$5.00 will be allowed.]~~ The deadline for COR renewal is ~~[January]~~ December 31. If the COR renewal application is not received by February 28, the COR will be no longer valid and regulatory action shall be initiated pursuant to R58-17-8(B)(3).

R58-17-19. Public Aquaculture, Private Fish Ponds, Institutional Aquaculture Facilities, Short Term Fishing Events, Private Stocking and Displays.

Details on the COR and regulatory requirements pursuant to R58-17-4(2) for operating public aquaculture, private fish ponds, institutional aquaculture facilities, short term fishing events, private stocking and displays are found in the code for Natural Resources, Wildlife Resources, at Rule R657-16 of the Utah Administrative Code.

R58-17-20. Classification of Pathogens.

Reporting to the Fish Health Policy Board not required

TABLE

Classification	Criteria	Control Methods	Included Pathogens (and diseases they cause)
Emergency	High morbidity	Cannot be treated	IHNV
	High mortality	Avoidance, eradication and disinfection	IPNV
	Exotic to Utah		VHSV
	Immediate action required		OMV
Prohibited	Can cause high morbidity or high mortality	Very difficult or impossible to treat	Myxobolus cerebralis (whirling disease)
	May be endemic to Utah	Avoidance, eradication and disinfection	Reni bacterium salmoninarum (BKD)
	Action required in reasonable time frame		Ceratomyxa shasta PKX organism (PKD) Bothriocephalus acheilognathi (Asian tapeworm)
Reportable	Management of diseases	Possible to prevent or treat	Yersinia ruckeri (Enteric redmouth)
	Not prohibited in Utah		
	Prohibited in some other states or countries		Aeromonas Salmonicida (furunculosis)
	Economic importance		Emerging fish Pathogens (including but not limited to any filterable agent or agent of clinical significance as determined by the Fish Health Policy Board)
	Inspection is optional Positive findings must be reported to the Fish Health Policy Board		
Unregulated	Not regulated in Utah		
	Includes all pathogens not listed above		

KEY: aquaculture
~~[October 17, 2000]~~ **2001**
Notice of Continuation June 15, 2000
 4-2-2
 4-37



Commerce, Occupational and Professional Licensing
R156-47b
 Massage Therapy Practice Act Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 23539

FILED: 03/01/2001, 16:58

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Massage Therapy Board determined that changes needed to be made in the rule with respect to curriculum standards for massage schools, to clarify examination requirements for licensure as a massage therapist, clarify the curriculum for a massage apprenticeship, and to provide additional definitions of unprofessional conduct.

SUMMARY OF THE RULE OR CHANGE: Section R156-47b-102 - Definitions: The definition for "COMTA" was amended to reflect the Commission's credit name (Commission on Massage Therapy Accreditation). Section R156-47b-302a regarding massage school curriculum standards and equivalent education and training: additions were made with respect to massage school curriculums including curriculum accreditation requirements as well as the classes that an acceptable curriculum must contain. Section R156-47b-302b - Examination Requirements: changes were made that provide if an applicant for licensure as a massage therapist has completed a Utah Massage Apprenticeship, they must take and pass the Utah Massage Theory Examination. If an applicant for licensure as a massage therapist has obtained their education through a massage school, they may only pass the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) National Certification Examination. These type of applicants are no longer eligible to take the Utah Massage Theory Examination. Section R156-47b-302c - Apprenticeship Standards: changed that a supervisor may not supervise more than two massage apprentices at one time. Added apprenticeship training standards and required hours in each standard. Added that an apprentice supervisor must not have been disciplined for any unprofessional or unlawful conduct within five years of the start of any apprenticeship program. Section R156-47b-302d - Exemptions from Licensure: deleted the section in its

entirety. Section R156-47b-502 - Unprofessional Conduct: added additional definitions of unprofessional conduct with respect to apprentice supervision and the notification of a client by a massage therapist concerning any health condition the licensee may have that could present a hazard to the client.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-47b-101, and Subsections 58-1-106(1) and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The Division will incur minimal costs, approximately \$50, to reprint this rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

❖LOCAL GOVERNMENTS: Proposed rule does not apply to local governments.

❖OTHER PERSONS: The Division does not anticipate any additional costs or savings to applicants for licensure as a massage therapist or a massage apprentice because the proposed amendments to the rule are a clarification of the statutory requirements. The proposed amendments should help applicants for licensure and the public better understand what is required for licensure under the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division does not anticipate any additional costs or savings to applicants for licensure as a massage therapist or a massage apprentice because the proposed amendments to the rule are a clarification of the statutory requirements. The proposed amendments should help applicants for licensure and the public better understand what is required for licensure under the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purposes of these amendments are to delete expired provisions, establish curriculum standards for schools, provide apprenticeship standards for those supervising and being supervised, and define additional areas of unprofessional conduct. There may be a difference in fiscal impact with license candidates choosing to pursue the apprenticeship option, both in time and dollars, since the national certifying body does not recognize apprenticeships. Our Legislature provides for apprenticeships, so this necessitates different examination requirements for apprentice and non-apprentice applications. However, this is a choice left to the candidate for licensure and it is within the control of the candidate to select his path to licensure. Ted Boyer

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:

Clyde Ormond at the above address, by phone at (801) 530-6254, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.cormond@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 04/16/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 03/22/2001, 9:00 a.m., 160 East 300 South, Conference Room 4B (fourth floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 04/17/2001

AUTHORIZED BY: A. Gary Bowen, Director

**R156. Commerce, Occupational and Professional Licensing,
R156-47b. Massage Therapy Practice Act Rules.**

R156-47b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 47b, as used in Title 58, Chapters 1 and 47b, or these rules:

(1) "COMTA" means the Commission on Massage [Training]Therapy Accreditation.

(2) "Direct supervision" as used in Subsection 58-47b-302(3)(d) means that the apprentice supervisor is in the facility where massage is being performed and is immediately available to the apprentice for advice, direction and consultation while the apprentice is engaged in performing massage.

(3) "Lymphatic massage" as used in Subsections 58-47b-302(4) and 58-47b-304(1)(i) means a method using light pressure applied by the hands to the skin in specific maneuvers to promote drainage of the lymphatic fluid from the tissue.

(4) "NCBTMB" means the National Certification Board for Therapeutic Massage and Bodywork.

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 47b, is further defined, in accordance with Subsection 58-1-203(5) in Section R156-47b-502.

R156-47b-302a. Qualifications for Licensure as a Massage Therapist - Massage School Curriculum Standards - Equivalent Education and Training.

(1) In accordance with Subsection 58-47b-302(2)([d]e)(i)(A), an applicant must graduate from a school of massage with a curriculum, which at the time of graduation, meets the following standards:

(a) curriculums accredited by COMTA; or

(b) curriculums accredited by an accrediting body that has United States Department of Education approval; or

(c) curriculums registered with the Utah State Board of Regents if the curriculum has not been in effect longer than five years from the registration date.

(d) Curriculums shall be not less than 600 hours and including the following:

(i) anatomy, physiology and pathology;

(ii) massage theory including the five basic strokes;

(iii) ethics;

(iv) safety and sanitation;

(v) clinic or practicum; and
 (vi) other related massage subjects as approved by the Division in collaboration with the Board. ~~curricula approved by the Division prior to July 1, 1997, subject to the requirements of Subsection (3);~~

(2) In accordance with Subsection 58-47b-302(2)(~~d~~e)(i)(B), an applicant who completes equivalent education and training must document that the education and training was approved by NCBTMB as evidenced by current NCBTMB certification.

~~(3) Massage schools whose curriculums were approved by the Division prior to July 1, 1997 have until July 1, 2001 to have the curriculum accredited by COMFTA without the necessity of having students who graduate from their program become certified by NCBTMB in order to qualify for licensure;~~

R156-47b-302b. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-47b-302(2)(~~e~~f) and 58-47b-302(3)(~~e~~f), the examination requirements for licensure are defined, clarified, or established as follows:

- (1) Applicants for licensure as a massage therapist shall:
 - (a) pass the Utah Massage Law and Rule Examination; and
 - (b) pass the NCBTMB National Certification Examination;
- or
- (c) pass the Utah Massage Theory Examination.

(2) Applicants for licensure as a massage therapist who have completed a "Utah Massage Apprenticeship" must:

- (a) ~~apprentice shall~~ pass the Utah Massage Theory Exam.
- (3) Applicants for licensure as a massage apprentice shall:
 - (a) pass the Utah Massage Law and Rule Examination.

R156-47b-302c. Apprenticeship Standards for a Supervisor.

In accordance with Subsection 58-47b-302(2)(~~d~~e)(ii), an apprentice supervisor shall:

- (1) not begin an apprenticeship program until:
 - (a) the apprentice is licensed; and
 - (b) the supervisor is approved by the division;
- (2) not begin a new apprenticeship program until:
 - (a) the apprentice being supervised becomes licensed as a massage therapist, unless otherwise approved by the division in collaboration with the board; and
 - (b) the supervisor complies with subsection (1);
- (3) supervise not more than ~~one~~ two apprentices at one time, unless otherwise approved by the division in collaboration with the board;
- (4) train the massage apprentice in the areas of:
 - (a) massage theory - 50 hours;
 - (b) massage client service - 300 hours;
 - (c) hands on instruction - 325 hours;
 - (d) massage techniques - 120 hours;
 - (e) anatomy, physiology and pathology - 150 hours;
 - (f) business practices - 25 hours;
 - (g) ethics - 15 hours; and
 - (h) safety and sanitation - 15 hours.

(~~4~~5) display a conspicuous sign near the work station of the apprentice stating "Apprentice in Training";

(~~5~~6) keep a daily record which shall include the hours of instruction and training completed, ~~and~~ the hours of client services performed, and the number of hours of training completed;

(~~6~~7) make available to the division upon request, the apprentice's training records ~~of hours completed~~;

(~~7~~8) verify the completion of the apprenticeship program on forms available from the division; ~~and~~

(~~8~~9) notify the division within ten working days if the apprenticeship program is terminated; and

(10) must not have been disciplined for any unprofessional or unlawful conduct within five years of the start of any apprenticeship program.

~~R156-47b-302d. Exemptions from Licensure.~~

~~(1) In accordance with Subsections 58-47b-302(4) and 58-47b-304(1)(i), the training standards for exemption for an individual to engage in lymphatic massage prior to July 1, 1998 are defined to include:~~

~~(a) graduation from a school registered in accordance with the Utah Post Secondary Proprietary School Act and rules which curriculum includes:~~

- ~~(i) 100 clock hours of anatomy and physiology;~~
- ~~(ii) 200 clock hours of training in lymphatic massage; and~~
- ~~(iii) 300 clock hours of training in skin care; or~~

~~(b) graduation from a post secondary school located outside the state of Utah which curriculum includes:~~

- ~~(i) 100 clock hours of anatomy and physiology;~~
- ~~(ii) 200 clock hours of training in lymphatic massage; and~~
- ~~(iii) 300 clock hours of training in skin care.~~

~~(2) In accordance with Subsection 58-47b-304(1)(h), students in training enrolled in an approved school are exempt only when performing massage as part of the approved school curriculum under supervision of a licensed massage therapist.~~

R156-47b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) engaging in any lewd, indecent, obscene or unlawful behavior while acting as a massage therapist;

(2) as an apprentice supervisor, failing to provide direct supervision to a massage apprentice;

(3) as an apprentice supervisor, failing to provide and document adequate instruction or training as applicable;

(4) as an apprentice supervisor, advising, directing or instructing an apprentice in any instruction or behavior that is inconsistent, contrary or contradictory to established professional or ethical standards of the profession;

(5) failing to notify a client of any health condition the licensee may have that could present a hazard to the client; and

(6) failure to use appropriate draping procedures to protect the client's personal privacy.

KEY: licensing, massage*

~~July 7, 1998~~2001

58-1-106(1)

58-1-202(1)

58-47b-101



Human Services, Aging and Adult Services

R510-1

Authority and Purpose

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 23538

FILED: 02/28/2001, 11:20

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Older Americans Act was reauthorized. This change updates reference to governing laws of the Division of Aging and Adult Services. The Work Force Investment Act included the requirements formerly contained in the Job Training Partnership Act as it related to senior employment.

SUMMARY OF THE RULE OR CHANGE: Updates legal reference in the Older Americans Act and the Workforce Investment Act.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-3-101 through 62A-3-312

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Reauthorization of the Older Americans Act, Pub. L. No. 106-501; and the Workforce Investment Act of 1998, 29 U.S.C. 2801 et seq.

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There is no cost or savings associated with this rule because it is simply a reference update.

❖LOCAL GOVERNMENTS: There is no cost or savings associated with this rule because it is simply a reference update.

❖OTHER PERSONS: More services will be available to consumers through local area contracts.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs. This is a reference change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The reauthorization of the Older Americans Act will allow the State to develop and continue programs for caregivers which could result in money going to providers through contracts. The Workforce Investment Act provides training and employment for low-income seniors.

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

Human Services
Aging and Adult Services
Room 325, Human Services Building
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:
Sally Anne Brown at the above address, by phone at (801) 538-8250, by FAX at (801) 538-4395, or by Internet E-mail at sabrown@hs.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 04/16/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 04/17/2001

AUTHORIZED BY: Helen Goddard, Director

R510. Human Services, Aging and Adult Services.

R510-1. Authority and Purpose.

R510-1-1. Authority.

(1) These rules are promulgated in accordance with the following laws:

(a) Older Americans Act, [PL 89-73]Pub. L. No. 106-501, 42 USC Section 3001 et seq.

(b) Utah Division of Aging and Adult Services, Section 62A, Chapter 3, Parts 1, 2, and 3.

(c) [Job Training Partnership Act, 29 USC Section 1503 et seq.]Workforce Investment Act of 1998, 29 U.S.C. 2801 et seq.

(d) Social Services Block Grant, 45 CFR Parts 16, 74, and 96.

R510-1-2. Purpose.

The purpose of this rule is for clarification of statutory authority and definition problems.

KEY: law, Older Americans Act*

[February 29, 1996]2001 62A-3-101 through 62A-3-312
Notice of Continuation January 23, 2001

42 USC [Section]3001



Transportation, Preconstruction, Right-of-Way Acquisition

R933-4

Bus Shelters

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 23536

FILED: 02/27/2001, 13:14

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To include bus benches in the rule.

SUMMARY OF THE RULE OR CHANGE: These amendments add bus benches to the rule, thus requiring a permit before advertising on a bus bench and sets a permit fee.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 72-7-102 and 72-7-103

FEDERAL REQUIREMENT FOR THIS RULE: Utah-Federal Agreement on Outdoor Advertising (Utah Code Ann. Section 72-7-501)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: As of now, it is not known if there will be any applicants for permits. Therefore, it is not known how much it will cost to process them.

❖LOCAL GOVERNMENTS: Local governments are not required to enforce this rule and it is not expected that they will request a license to advertise. Therefore, there should be no cost to local governments.

❖OTHER PERSONS: Will require \$125 fee per advertising permit. The amount of applicants is not known as this time. COMPLIANCE COSTS FOR AFFECTED PERSONS: Because bus bench owners would be able to get a license for advertising (whereas previously they have not been able to do so), if they request a license, their costs will be \$125 per permit. This will only occur if the bus bench owner chooses to advertise on his bus bench. Otherwise, bus bench owners will not suffer any impact from complying with this proposal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department has an obligation to regulate advertising along state right-of-way. State law requires a permit or license before advertising can be allowed; therefore, by allowing bus bench owners to get licenses, this rule allows owners to advertise and take advantage of whatever revenue they may obtain from that source. This rule would give bus bench owners the same opportunity to advertise as the owners of bus bench shelter. The fiscal impact on business is minimal considering: (1) that a bus bench owner need only apply for a license if he wants the revenue from advertising; and (2) the potential revenue an owner may get from advertising.

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

Transportation
Preconstruction, Right-of-Way Acquisition
Fourth Floor, Calvin Rampton Complex
4501 South 2700 West
Salt Lake City, UT 84119, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

James H. Beadles at the above address, by phone at (801) 965-4168, by FAX at (801) 965-4338, or by Internet E-mail at jbeadles@dot.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 04/16/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 04/17/2001

AUTHORIZED BY: James H. Beadles, Legal Counsel

R933. Transportation, Preconstruction, Right-of-Way Acquisition.

R933-4. Bus Shelters and Bus Benches.

R933-4-1. Authority.

The provisions of this rule are authorized under Sections [27-12-133 through 27-12-135][72-7-102 through 72-7-104.

R933-4-2. Definitions.

(1) "ADA" means the Americans with Disabilities Act.

(2) "Advertisement or advertising" means a printed or painted sign encouraging or promoting the purchase or use of goods or services, but does not include campaign posters or signs or other signs or advertisements prohibited by law, including these rules.

(3) "Bus Benches" means any type of bench that is located at a designated bus stop accepted as such by the Utah Department of Transportation, used to aid in the loading and unloading of passengers for the convenience of passengers of public transportation systems.

([2]4) "Bus shelter" means a shelter located at a designated bus stop accepted as such by the Utah Department of Transportation, used to aid in the loading and unloading of passengers for the convenience of passengers of public transportation systems.

(5) "Clear Zone" as defined under "AASHTO Roadside Design Guide".

([3]6) "UDOT" means Utah Department of Transportation.

R933-4-3. Purpose.

The purpose of this rule is to authorize bus shelters and bus benches at officially recognized bus stops accepted as such by [~~the Utah Department of Transportation~~UDOT] and within the limits of these rules, on UDOT rights-of-way and for the benefit of the public, also allowing certain specified incidental advertising benefits to the provider of the bus shelter or bench.

R933-4-4. Permitting and Conditions for Valid Permits.

Bus shelters or benches, including those on which commercial advertisements are placed, may be erected and maintained on the state rights-of-way of public roads subject to the following conditions and requirements:

(1) Any person wishing to erect and maintain a bus shelter or bench on the state right-of-way of a public road shall apply to [~~the Utah Department of Transportation~~UDOT] for a [~~permit~~license]. As a condition of the issuance of the [~~permit~~license], UDOT must approve the bus shelter building or bench plans and the location of the bus shelter or bench on the right-of-way, provided, however, that such approval is subject to any and all restrictions imposed by Title 23 United States Code and 23 CFR relating to the federal-aid system and the Utah Outdoor Advertising Act and Rules, except as specifically otherwise provided herein. [~~The fee for each permit is \$100 for the initial permit, and \$25 for the annual renewal thereafter.~~The initial license fee is \$200 for a five-year period. Licenses are renewable thereafter, at a cost of \$25 per year for a five-year period.

(2) If the bus shelter or bench is to be located on a street, road, or right-of-way of a county or municipality, the respective county

or municipality also must approve the erection and maintenance of the bus shelter or bench, and for that purpose, a copy of the application to the respective county or municipality and permit shall be provided to UDOT as part of the application for a license.

(3) An applicant to UDOT for a license hereunder shall include as part of the application a written statement signed by each owner of property abutting the proposed bus shelter or bench site who is required to be notified under subsection (11) of this section, acknowledging receipt of the notice and opportunity to comment provided for under that subsection, or copy of the notice together with a receipt evidencing the notice was sent to such owner by certified mail together with a declaration under oath affirming that a bone fide attempt to obtain the signed written statement was made.

([3]4) A copy of the application for a bus shelter or bench [permit]license shall be provided also to any public transit agency or authority providing the public transportation of persons to be served by the bus shelter or bench, for all bus shelters or benches on routes of that agency or authority for its approval or rejection of proposed locations. The sequence of applications shall be first, the transit agency or authority; second, the municipality; and third, the state.

([4]5) As a condition of issuing a [permit]license for the erection of a bus shelter or bench on the state right-of-way of a public road, UDOT shall require that the bus shelter or bench will be properly maintained and that its location will meet minimum setback requirements as follows:

(a) Where a curb and gutter are present, there shall be a minimum of four feet clearance from the face of the curb to any portion of the bus shelter or bench;

(b) Where no curb or gutter is present, the front of the bus shelter or bench shall be at least ten feet from the edge of the main traveled roadway located outside of the clear zone;

(c) UDOT may provide a schedule of other safety requirements consistent with law.

([5]6) A map of the municipality or county, or both, showing the proposed bus shelter or bench locations shall accompany the application.

([6]7) A plan shall be prepared for each bus shelter or bench location. The plan should be drawn to an approximate scale and the scale indicated on the sketch plan. The plan, as a minimum, shall include a written description of the location and the assigned shelter or bench number. The shelter or bench position shall be shown on the plan with dimensions shown from the closest edge of the shelter or bench to roadway or curb, plus dimensions to the nearest intersecting street. The road characteristics shall be shown on the plan. Other pertinent existing features such as sidewalks, utility poles, large trees, and signs shall be shown as necessary. The existing right-of-way line shall be shown when available and if required.

([7]8) Each applicant must provide a performance bond, letter of escrow, or other satisfactory security to assure that the authorized work is accomplished in accordance with the approved permit. Any letter of escrow or other satisfactory security must be from a bank which is located in Utah. A bond may be underwritten by a surety company located outside Utah if it is countersigned by a Utah resident agent of that surety company. This security must be described on the appropriate UDOT form and the amount will be

based on the number of shelters or benches being [permitted]licensed, the amount per shelter or bench to be \$500.

The bond will be released only after all work has been satisfactorily completed for all bus shelter or bench locations covered under the [permit]license. The applicant shall notify the appropriate UDOT Region Permit Office when all work is completed for the shelter or bench installations covered by the [permit]license. If all work on the right-of-way has been completed as per [permit]license requirements, the UDOT permit officer will perform a final inspection. [Upon final inspection and approval, the bond for the permit will be authorized for release.]The bond shall be held during the life of the shelter or bench to secure compliance with this rule.

([8]9) Notwithstanding any other provision of law that may be less restrictive, no bus shelter or bench may be erected and maintained less than [300]150 feet from another bus shelter or off-premise outdoor advertising sign.

([9]10) A bus shelter less than 20 feet long may have advertising only on one end of the shelter, on which end an advertising face may be placed on both sides. If a bus shelter of 20 feet or longer is approved by the department, which in the interest of the traveling public it may choose to approve, the shelter may have advertising on both ends, on each of which an advertising face may be placed on both sides. Each advertising face, regardless of the length of the shelter, is limited to no more than 72 inches by 60 inches, with no more than one advertisement per face. No bus shelter may exceed a height of ten feet.

(11) A bus bench may advertise on both sides of the back rest, but may not exceed 2 feet high by 8 feet long.

([10]12) The [permit]license applicant shall notify the abutting property owner by certified mail of the proposed shelter or bench location and any proposed advertising, and provide an opportunity to comment.

([11]13) A transit bus shelter or bench shall not infringe upon or obstruct any sidewalk, bike path, pedestrian path, driveway, drainage structure or ditch, etc. without adding or allowing adequate passage, which meet ADA requirements.

([12]14) Prior to permitting the installation of the shelter or bench, any impacted utility companies and municipalities must be notified by the [permit]license applicant to determine location of utilities and prevent conflicts. A license to erect and maintain a bus shelter is subject to any pre-existing utility license or right.

([13]15) All shelter utility connections must be approved by the appropriate city or county agency.

([14]16) Flashing lights on a transit bus shelter are prohibited. All lights shall be placed or shielded so they do not interfere with motorists on the roadway.

([15]17) Sides and internal dividers in transit bus shelters shall be constructed of structurally sound materials and provide visibility of waiting passengers to passing traffic and pedestrians. All transparent materials shall be shatter proof. No shelter may be located in such a manner, or be constructed of such materials, as to adversely affect sight distance at any intersection or obstruct the view of traffic signs or other traffic control devices.

([16]18) Transit bus shelters must be securely attached to their foundations and must provide for a clear opening between the structure and foundation to facilitate cleaning and preclude the accumulation of debris.

(~~17~~19) Transit bus shelters or benches may not be located within five feet of any fire hydrant or handicapped parking space.

(~~18~~20) Each bus shelter or bench shall have placed on it a number unique to that location at least two inches by two inches in size, placed at a location on the shelter that renders the sign number visible from the street. The telephone number of the applicant or person to contact regarding the shelter or bench and the area immediately around the shelter, or both, shall be appropriately displayed on the shelter.

(~~19~~21) [~~Permits~~Licenses] are valid for a [~~one-year~~five-year] period ~~or part thereof~~, all permits to be renewed before July 1. [~~Permits are to be issued by each UDOT Region Permit Office and may be grouped in numbers up to 25 bus shelter locations per group, with each bus shelter location identified by a unique number corresponding to the number placed on the shelter.~~]

(22) A license lapses unless construction is completed within 90 days of the date of the license.

(~~20~~23) Any bus shelter or bench erected and maintained on the right-of-way of a public road in violation of this rule or in violation of the conditions of the [~~permit~~license] issued by UDOT may be ordered removed by UDOT.

(24) If such a bus shelter or bench is not removed by its owner within 30 days after its owner has been issued a written order of removal by UDOT, the department may cause the bus shelter or bench to be removed and submit a statement of expenses incurred in the removal to the owner of the bus shelter or bench. If payment or arrangement to make payment is not made within 60 days after the receipt of such statement, UDOT may institute legal proceedings for collection. When a bus shelter or bench is located on a county or municipal street, road, or right-of-way, UDOT may delegate its powers under this rule to the respective county or municipality, and the respective county or municipality shall cooperate with and assist UDOT in enforcing the conditions of [~~permits~~licenses] issued by [~~the~~] UDOT pursuant to the provisions of this section.

(~~21~~25) The person to whom a [~~permit~~license] has been issued for the erection and maintenance of a bus shelter or bench on the right-of-way of a public road shall at all times assume all risks for the bus shelter or bench and shall indemnify and hold harmless the State of Utah, the Utah Department of Transportation, and any county or municipality against all losses or damages resulting solely from the existence of the bus shelter or bench.

(~~22~~26) All future bus shelter or bench additions must be [~~permitted~~licensed] separately and a bond obtained for the number of bus shelters or benches to be included in the succeeding [~~permit~~license]. The same data and information will be required for each separate bus shelter or bench [~~permit~~license] application.

(~~23~~27) Any existing bus shelter or bench located on UDOT rights-of-way in violation of law is declared to be a public nuisance, and its removal may be ordered by the department.

(~~24~~28) All construction, maintenance and operational activities shall be the sole responsibility of the [~~permittee~~]licensee.

R933-4-5. Alteration or Termination in Public Interest.

If UDOT determines that the bus shelters or benches do not serve the public interest, the department may terminate the privilege of maintaining bus shelters or benches, and the prior erection or maintenance of shelters or benches pursuant to rule shall not require continued allowance of shelters or benches or compensation to the provider of the shelters or benches.

R933-4-6. Relocation of Bus Shelters or Benches.

If road construction, maintenance or repair requires displacement of a bus shelter or bench and relocation is allowed, such shall be accomplished at the expense of the owner of the bus shelter or bench. Prior to any relocation of any bus shelter or bench, Licensee shall submit an application for review to UDOT for approval.

KEY: buses, [~~buslines~~]bus benches, bus shelters*, right-of-way [~~July 16, 1998~~2001 [~~27-12-133~~72-7-102 through [~~27-12-135~~72-7-104]



End of the Notices of Proposed RulesSection

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).

Commerce, Administration
R151-46b
Department of Commerce
Administrative Procedures Act Rules

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

DAR FILE NO.: 23537
FILED: 02/28/2001, 09:41
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: This rule was made pursuant to the authority granted by Subsection 63-46b-1(6).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule was subjected to an intensive year-long review in 1999-2000, resulting in extensive amendments which were enacted on June 1, 2000, after publication and a public hearing. The rule enables the department, and its divisions, through uniformity, to better serve the public. The rule further provides all parties to an adjudicative action, and all attorneys practicing before the department, with equal access to knowledge of the procedures which will be followed in proceedings before the department and its divisions.

(DAR Note: The amendment to R151-46b was published in the May 1, 2000, issue of the *Utah State Bulletin* under DAR No. 22761.)

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

Commerce
Administration
Heber M. Wells Building
160 East 300 South
PO Box 146701
Salt Lake City, UT 84114-6701, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Michael R. Medley at the above address, by phone at (801) 530-7663, by FAX at (801) 530-6001, or Internet E-mail at mmedley@br.state.ut.us.

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

EFFECTIVE: 02/28/2001



Commerce, Occupational and
Professional Licensing
R156-47b
Massage Therapy Practice Act Rules

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

DAR FILE NO.: 23535
FILED: 02/26/2001, 08:48
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 58, Chapter 47b provides for the licensure of massage therapists

and massage apprentices. Subsection 58-1-106(1) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-47b-201(3) provides that the Board of Massage Therapy's duties and responsibilities shall be in accordance with Section 58-1-202. Subsections 58-1-202(1) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 47b with respect to massage therapists and massage apprentices.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the rules were originally enacted in May 1996, no written comments have been received with respect to this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it clarifies the provisions of Title 58, Chapter 47b with respect to massage therapists and massage apprentices.

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:
Clyde Ormond at the above address, by phone at (801) 530-6254, by FAX at (801) 530-6511, or Internet E-mail at brdopl.cormond@email.state.ut.us.

AUTHORIZED BY: A. Gary Bowen, Director

EFFECTIVE: 02/26/2001

◆ _____ ◆

**End of the Five-Year Notices of Review
and Statements of Continuation Section**

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

Public Service Commission

Administration

No. 23376 (AMD): R746-341. Lifeline Rule.

Published: January 1, 2001

Effective: March 1, 2001

Tax Commission

Property Tax

No. 23316 (AMD): R884-24P-65. Proportional Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.

Published: December 1, 2000

Effective: February 20, 2001

End of the Notices of Rule Effective Dates Section

Rules Index Begins on the Following Page

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, 2001, including notices of effective date received through March 1, 2001, the effective dates of which are no later than March 15, 2001. 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	

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<u>Finance</u>					
R25-14	Payment of Attorneys Fees in Death Penalty Cases	23366	AMD	01/22/2001	2000-24/5
<u>Fleet Operations</u>					
R27-2	Fleet Operations Adjudicative Proceedings	23522	5YR	02/08/2001	2001-5/39
R27-7	Safety and Loss Prevention of State Vehicles	23345	NEW	01/31/2001	2000-24/6
<u>Fleet Operations, Surplus Property</u>					
R28-2	Surplus Firearms	23523	5YR	02/08/2001	2001-5/39
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R58-10	Meat and Poultry Inspection	23306	AMD	01/03/2001	2000-23/9

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<u>Plant Industry</u>					
R68-1	Utah Bee Inspection Act Governing Inspection of Bees	23434	5YR	01/16/2001	2001-3/94
R68-2	Utah Commercial Feed Act Governing Feed	23435	5YR	01/16/2001	2001-3/95
R68-6	Utah Nursery Act	23436	5YR	01/16/2001	2001-3/95
R68-10	Quarantine Pertaining to the European Corn Borer	23437	5YR	01/16/2001	2001-3/96
R68-12	Quarantine Pertaining to Mint Wilt	23438	5YR	01/16/2001	2001-3/96
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R70-610	Uniform Retail Wheat Standards of Identity	23430	5YR	01/16/2001	2001-3/96
R70-610	Uniform Retail Wheat Standards and Identity	23431	NSC	02/01/2001	Not Printed
R70-620	Enrichment of Flour and Cereal Products	23432	5YR	01/16/2001	2001-3/97
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R156-26a	Certified Public Accountant Licensing Act Rules	23296	AMD	01/04/2001	2000-23/11
R156-37-502	Unprofessional Conduct	23401	NSC	02/01/2001	Not printed
R156-47b	Massage Therapy Practice Act Rules	23535	5YR	02/26/2001	2001-6/49
R156-69	Dentist and Dental Hygienist Practice Act Rules	23141	AMD	see CPR	2000-19/10
R156-69	Dentist and Dental Hygienist Practice Act Rules	23141	CPR	02/15/2001	2001-2/17
R156-73	Chiropractic Physician Practice Act Rules	23390	AMD	02/15/2001	2001-2/2
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R223-2	Public Library online Access for Eligibility to receive Public Funds	23352	NEW	02/15/2001	2000-24/11
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R315-315-8	Petroleum Contaminated Soils	22858	CPR (First)	see CPR (Second)	2000-17/67
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R317-1-3	Requirements for Waste Discharges	23164	CPR	01/23/2001	2000-24/74

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R317-7	Underground Injection Control (UIC) Program	23162	CPR	01/23/2001	2000-24/75
R317-8	Utah Pollutant Discharge Elimination System (UPDES)	23161	AMD	see CPR	2000-19/40
R317-8	Utah Pollutant Discharge Elimination System (UPDES)	23161	CPR	01/23/2001	2000-24/78
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R426-6	Emergency Medical Services Grants Program Rules	23185	AMD	01/17/2001	2000-20/27
R426-7	Emergency Medical Services Prehospital Data System Rules	23186	NEW	01/30/2001	2000-20/29
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R501-7	Child Placing Agencies	23121	CPR	01/16/2001	2000-23/59

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ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	* = Text too long to print in <i>Bulletin</i> , or repealed text not printed in <i>Bulletin</i>
5YR = Five-Year Review	
EXD = Expired	

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