

UTAH STATE BULLETIN

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

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TABLE OF CONTENTS

1. SPECIAL NOTICES

Governor, Administration: Governor's Proclamation: Supplemental to the Fifth Special Session for the Fifty-Fourth Legislature	1
Governor, Administration: Governor's Executive Order: Declaring a State of Emergency Because of Fire Danger	1
Transportation, Motor Carrier: Public Hearing on Rule R909-19, Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification	2

2. NOTICES OF PROPOSED RULES

Commerce

Occupational and Professional Licensing	
No. 25052 (Amendment): R156-37. Utah Controlled Substance Act Rules	4
Real Estate	
No. 25020 (Amendment): R162-6. Licensee Conduct	6

Financial Institutions

Credit Unions	
No. 25058 (Amendment): R337-4. Establishment of	11

Natural Resources

Parks and Recreation	
No. 25015 (Amendment): R651-206. Carrying Passengers for Hire	14
No. 25014 (Amendment): R651-215. Personal Flotation Devices	17
No. 25013 (Amendment): R651-216. Navigation Lights - Note: Figures 1 through 7 mentioned below are on file with the Utah Division of Parks and Recreation	19
No. 25010 (Amendment): R651-219. Additional Safety Equipment	20
No. 25017 (Amendment): R651-221. Boat Livery Agreements	21
No. 25012 (Amendment): R651-223. Vessel Accident Reporting	21
No. 25016 (Amendment): R651-224. Towed Devices	22
No. 25011 (Repeal): R651-225. Navigation and Steering Rules	24
Wildlife Resources	
No. 25009 (Amendment): R657-37. Cooperative Wildlife Management Units for Big Game	25

Public Safety

Driver License	
No. 25059 (Amendment): R708-7. Functional Ability in Driving: Guidelines for Physicians	30
Fire Marshal	
No. 25066 (Amendment): R710-1. Concerns Servicing Portable Fire Extinguishers	32
No. 25049 (Amendment): R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board	39

TABLE OF CONTENTS

No. 25065 (Amendment): R710-6. Liquefied Petroleum Gas Rules 42

No. 25067 (Amendment): R710-7. Concerns Servicing Automatic Fire Suppression Systems 48

No. 25057 (Amendment): R710-9. Rules Pursuant to the Utah Fire Prevention Law 53

Regents (Board Of)

Administration

No. 25062 (Amendment): R765-605. Utah Centennial Opportunity Program for Education 58

No. 25063 (Amendment): R765-608. Utah Engineering and Computer Science Loan Forgiveness Program 62

No. 25064 (Amendment): R765-685. Utah Education Savings Plan Trust 65

Transportation

Operations, Maintenance

No. 25053 (New Rule): R918-2. Widening Pavement to Curb and Gutter 71

Workforce Services

Employment Development

No. 25050 (Amendment): R986-700-702. General Provisions 72

3. NOTICES OF CHANGES IN PROPOSED RULES

Health

Epidemiology and Laboratory Services, Environmental Services

No. 24728: R392-100. Food Service Sanitation 76

4. NOTICES OF 120-DAY (EMERGENCY) RULES

Natural Resources

Parks and Recreation

No. 24989: R651-206. Carrying Passengers for Hire 83

No. 24988: R651-215. Personal Flotation Devices 86

No. 24993: R651-216. Navigation Lights - Note: Figures 1 through 7 mentioned below are on file with the Utah Division of Parks and Recreation 87

No. 24990: R651-219. Additional Safety Equipment 88

No. 24995: R651-221. Boat Livery Agreements 90

No. 24991: R651-223. Vessel Accident Reporting 90

No. 24994: R651-224. Towed Devices 91

No. 24992: R651-225. Navigation and Steering Rules 93

5. FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Administrative Services

Risk Management

No. 25054: R37-1. Risk Management General Rules 95

TABLE OF CONTENTS

No. 25055: R37-2. Risk Management State Workers' Compensation Insurance Administration	95
No. 25056: R37-3. Risk Management Adjudicative Proceedings	96
<u>Attorney General</u>	
Administration	
No. 25007: R105-2. Records Access and Management.....	97
<u>Commerce</u>	
Real Estate	
No. 25028: R162-9. Continuing Education	97
<u>Corrections</u>	
Administration	
No. 24997: R251-710. Search	98
<u>Health</u>	
Health Care Financing, Coverage and Reimbursement Policy	
No. 25026: R414-1A. Medicaid Policy for Experimental or Unproven Medical Practices.....	98
No. 25029: R414-60. Medicaid Policy for Pharmacy Copayment Procedures.....	99
Epidemiology and Laboratory Services, Laboratory Services	
No. 25060: R438-12. Rules for Authorization of Individuals Other Than Physicians, Registered Nurses, or Practical Nurses to Withdraw Blood for Alcoholic or Drug Determinations When Requested by a Peace Officer and for Issuance of Permits to Such Individuals	99
Epidemiology and Laboratory Services, Laboratory Improvement	
No. 25061: R444-11. Rules for Approval to Perform Blood Alcohol Examinations	100
<u>Human Services</u>	
Substance Abuse	
No. 25018: R544-4. Utah Standards for Approval of Alcohol and Drug Educational Programs for Court-Referred DUI Offenders.....	100
No. 25019: R544-5. Alcohol Training and Education Seminar Rules of Administration.....	101
<u>Natural Resources</u>	
Wildlife Resources	
No. 25006: R657-18. Wood Products on Division of Wildlife Resources Lands	101
No. 25005: R657-28. Use of Division Lands - Rights-of-Way, Leases and Special Use Permits	102
<u>Public Safety</u>	
Driver License	
No. 25008: R708-34. Medical Waivers for Intrastate Commercial Driving Privileges.....	102
Fire Marshal	
No. 24996: R710-3. Assisted Living Facilities.....	103
<u>School and Institutional Trust Lands</u>	
Administration	
No. 25030: R850-1. Definition of Terms	103
No. 25045: R850-2. State Land Management Objectives.....	104

TABLE OF CONTENTS

No. 25043: R850-3. Applicant Qualifications, Application Forms, and Application Processing	104
No. 25041: R850-4. Application Fees and Assessments	105
No. 25042: R850-5. Payments, Royalties, Audits, and Reinstatements	105
No. 25040: R850-6. Government Records Access and Management	106
No. 25048: R850-20. Mineral Resources	106
No. 25035: R850-30. Special Use Leases.....	107
No. 25034: R850-40. Easements	107
No. 25033: R850-50. Range Management.....	108
No. 25032: R850-60. Cultural Resources.....	108
No. 25031: R850-80. Sale of Trust Lands	109
 <u>Transportation</u>	
Motor Carrier, Ports of Entry	
No. 25023: R912-3. Restriction of Truck Traffic on SR-128 - Legal and Permitted Vehicles.....	109
Operations, Aeronautics	
No. 25024: R914-1. Rules and Regulations of the Utah State Aeronautical Committee	110
No. 25025: R914-2. Safety Rules and Procedures for Aircraft Operations on Roads	110
Operations, Traffic and Safety	
No. 25021: R920-1. Manual of Uniform Traffic Control Devices.....	111
No. 25022: R920-2. Traffic Control Systems for Railroad-Highway Grade Crossings.....	111
 <u>Workforce Services</u>	
Administration	
No. 25036: R982-101. Americans With Disabilities Act Complaint Procedure.	111
No. 25037: R982-201. Government Records Access and Management Act.....	112
No. 25038: R982-301. Councils	112
No. 25039: R982-601. Provider Code of Conduct	113
Workforce Information and Payment Services	
No. 25044: R994-403. Claim for Benefits.....	113
No. 25046: R994-405. Ineligibility for Benefits.....	114
 6. NOTICES OF EXPIRED RULES	115
 7. NOTICES OF RULE EFFECTIVE DATES.....	117
 8. RULES INDEX.....	119

SPECIAL NOTICES

GOVERNOR'S PROCLAMATION: SUPPLEMENTAL TO THE FIFTH SPECIAL SESSION FOR THE FIFTY-FOURTH LEGISLATURE

PURSUANT to Item 7 of the Proclamation issued June 19, 2002, calling the Legislature into special session, I add the following items to the agenda for the special session:

1. To clarify statutory authority for collecting DNA specimens.
2. To consider creating a task force to study revenue sources for water.
3. For the Senate to advise and consent to appointments made by the Governor.

(STATE SEAL)

IN TESTIMONY WHEREOF, I have here unto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the State Capitol in Salt Lake City, Utah, this 9th day of July, 2002.

MICHAEL O. LEAVITT
Governor

OLENE S. WALKER
Lieutenant Governor

GOVERNOR'S EXECUTIVE ORDER: DECLARING A STATE OF EMERGENCY BECAUSE OF FIRE DANGER

Whereas, the danger from wildland fires is extremely high throughout the State of Utah; and

Whereas, numerous wildland fires are burning and continue to burn in various areas statewide and present a serious threat to public safety, property, natural resources and the environment; and

Whereas, some of the areas are extremely remote and inaccessible and the situation has the potential to greatly worsen if left unattended; and

Whereas, immediate action is required to suppress the fires and mitigate post-burn flash floods to protect public safety, property, natural resources and the environment; and

Whereas, these conditions do create a disaster emergency within the intent of the Disaster Response and Recovery Act of 1981; and

Now, Therefore, I, Michael O. Leavitt, Governor of the State of Utah, by virtue of the power vested in me by the constitution and the laws of the State of Utah;

Do Hereby Order That: It is found, determined and declared that a "State of Emergency" exists statewide due to the threat to public safety, property, natural resources and the environment for thirty days, effective as of June 30, 2002, requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

In Testimony, Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah, this 30th day of June, 2002.

(State Seal)

Michael O. Leavitt
Governor

Attest:

Olene S. Walker
Lieutenant Governor

**TRANSPORTATION
MOTOR CARRIER**

PUBLIC HEARING ON RULE R909-19, SAFETY REGULATIONS FOR TOW TRUCK OPERATIONS - TOW TRUCK REQUIREMENTS FOR EQUIPMENT, OPERATION AND CERTIFICATION

The Department of Transportation, Motor Carrier Division will be holding a public hearing for those interested in making comments on Rule 909-19, Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification. This hearing will be held Thursday, August 1, 2002, at the Utah State Capitol Building, Room 303, from 1:00 p.m. - 5:00 p.m.

Written comments can be sent until August 15, 2002, to: Chad Sheppick, 4501 South 2700 West, PO Box 148240, Salt Lake City, UT 84114-8240.

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between June 15, 2002, 12:00 a.m., and July 1, 2002, 11:59 p.m. are included in this, the July 15, 2002, 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 each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least August 14, 2002. 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 November 12, 2002, 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 (2001); 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.

Commerce, Occupational and
Professional Licensing
R156-37
Utah Controlled Substance Act Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25052

FILED: 06/27/2002, 15:56

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division needs to clarify two subsections in the existing rule and add amendments to allow an individual who does not have a primary license to obtain a Utah controlled substance license in order to receive and store controlled substances.

SUMMARY OF THE RULE OR CHANGE: In Section R156-37-102: added a definition for "principle place of business or professional practice" so practitioners understand when more than one controlled substance license is needed. In Section R156-37-302: additions were made to allow individuals who are employed by the government to perform animal capture to obtain a controlled substance license without a primary license. An addition also allows controlled substance licensure for ambulance companies so that they may obtain and store controlled substances for use in ambulances. In Section R156-37-603: amendments are made to Subsection R156-37-603(4) to clarify that a prescription written with a dispensing date in the future may be filled within 10 days of the date so the customers in rural areas or who utilize mail order pharmacies may obtain their prescriptions in a timely manner.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 58-1-106(1) and 58-37-6(1)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** The Division will incur minimal costs, less than \$50, to reprint this rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the current Division budget.
- ❖ **LOCAL GOVERNMENTS:** Proposed amendments do not affect local government.
- ❖ **OTHER PERSONS:** By clarifying the principle place of business to mean any location where controlled substances are received or stored, some practitioners may not need to obtain as many controlled substance licenses as they have in the past, thus resulting in a savings of a \$90 application fee and a \$50 renewal fee every 2 years. Also, in the past the Division has required individuals to obtain a research pharmacy license in order to obtain a controlled substance license; however, these proposed amendments will now allow the controlled substance license without primary licensure thus saving a \$100 application fee and a \$50 renewal fee every 2 years. The Division is unable to determine an aggregate savings amount since the number of people affected by these proposed amendments is unknown.

COMPLIANCE COSTS FOR AFFECTED PERSONS: By clarifying the principle place of business to mean any location where controlled substances are received or stored, some practitioners may not need to obtain as many controlled substance licenses as they have in the past, thus resulting in a savings of a \$90 application fee and a \$50 renewal fee every 2 years. Also, in the past the Division has required individuals to obtain a research pharmacy license in order to obtain a controlled substance license; however, these proposed amendments will now allow the controlled substance license without primary licensure thus saving a \$100 application fee and a \$50 renewal fee every 2 years.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule changes do not appear to pose any negative fiscal impact to businesses, and may in fact result in a positive fiscal impact to certain regulated individuals and businesses who will no longer need a primary license in addition to a controlled substance license.
Ted Boyer, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Laura Poe at the above address, by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at lpoe@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/14/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: J. Craig Jackson, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-37. Utah Controlled Substances Act Rules.
R156-37-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 37, as used in Title 58, Chapters 1 and 37, or these rules:

- (1) "DEA" means the Drug Enforcement Administration of the United States Department of Justice.
- (2) "NABP" means the National Association of Boards of Pharmacy.
- (3) "Principle place of business or professional practice", as used in Subsection 58-37-6(2)(e), means any location where controlled substances are received or stored.
- (4) "Schedule II controlled stimulant" means any material, compound, mixture or preparation listed in Subsection 58-37-4(2)(b)(iii).

([4]5) "Unprofessional conduct", as defined in Title 58 is further defined in accordance with Subsections 58-1-203(5) and 58-37-6(1)(a), in Section R156-37-502.

R156-37-302. Qualifications for Licensure - Application Requirements.

(1) An applicant for a controlled substance license shall:
(a) submit an application in a form as prescribed by the division; and

(b) shall pay the required fee as established by the division under the provisions of Section 63-38-3.2.

(2) Any person seeking a controlled substance license shall:

(a) be currently licensed by the state in the appropriate professional license classification as listed in R156-37-301 and shall maintain that license classification as current at all times while holding a controlled substance license; or

(b) be engaged in the following activities which require the administration of a controlled substance but do not require licensure under Subsection (a):

(i) animal capture for transport or relocation as an employee or under contract with a state or federal government agency;

(ii) providing emergency services to an injured or ill person by an ambulance service; or

(iii) other activity approved by the Division in collaboration with the appropriate board.

(3) The division and the reviewing board may request from the applicant information which is reasonable and necessary to permit an evaluation of the applicant's:

(a) qualifications to engage in practice with controlled substances; and

(b) the public interest in the issuance of a controlled substance license to the applicant.

(4) To determine if an applicant is qualified for licensure, the division may assign the application to a qualified and appropriate licensing board for review and recommendation to the division with respect to issuance of a license.

R156-37-603. Restrictions Upon the Prescription, Dispensing and Administration of Controlled Substances.

(1) A practitioner may prescribe or administer the Schedule II controlled substance cocaine hydrochloride only as a topical anesthetic for mucous membranes in surgical situations in which it is properly indicated and as local anesthetic for the repair of facial and pediatric lacerations when the controlled substance is mixed and dispensed by a registered pharmacist in the proper formulation and dosage.

(2) A practitioner shall not prescribe or administer a controlled substance without taking into account the drug's potential for abuse, the possibility the drug may lead to dependence, the possibility the patient will obtain the drug for a nontherapeutic use or to distribute to others, and the possibility of an illicit market for the drug.

(3) When writing a prescription for a controlled substance, each prescription shall contain only one controlled substance per prescription form and no other legend drug or prescription item shall be included on that form.

(4) [A prescription for a Schedule II controlled substance shall not be written for a quantity greater than medically necessary and in no case in quantities greater than a 30-day supply] When issuing more than one prescription at the same time for the same Schedule II controlled substance in accordance with Subsection 58-37-6(7)(f)(v), the restriction in Subsection (D) therein, that unless the practitioner

determines there is a valid medical reason to the contrary, the date for dispensing the second or third prescription may not be fewer than 30 days from the dispensing date of the previous prescription, is clarified by determining that a valid medical reason to the contrary including dispensing a second or third no more than 10 days earlier, to allow for receipt of the prescription before the previous prescription runs out.

(5) If a practitioner fails to document his intentions relative to refills of controlled substances in Schedules III through V on a prescription form, it shall mean no refills are authorized. No refill is permitted on a prescription for a Schedule II controlled substance.

(6) Refills of controlled substance prescriptions shall be permitted for the period from the original date of the prescription as follows:

(a) Schedules III and IV for six months from the original date of the prescription; and

(b) Schedule V for one year from the original date of the prescription.

(7) No refill may be dispensed until such time has passed since the date of the last dispensing that 80% of the medication in the previous dispensing should have been consumed if taken according to the prescriber's instruction.

(8) No prescription for a controlled substance shall be issued or dispensed without specific instructions from the prescriber on how and when the drug is to be used.

(9) Refills after expiration of the original prescription term require the issuance of a new prescription by the prescribing practitioner.

(10) Each prescription for a controlled substance and the number of refills authorized shall be documented in the patient records by the prescribing practitioner.

(11) A practitioner shall not prescribe or administer a Schedule II controlled stimulant for any purpose except:

(a) the treatment of narcolepsy as confirmed by neurological evaluation;

(b) the treatment of abnormal behavioral syndrome, attention deficit disorder, hyperkinetic syndrome, or related disorders;

(c) the treatment of drug-induced brain dysfunction;

(d) the differential diagnostic psychiatric evaluation of depression;

(e) the treatment of depression shown to be refractory to other therapeutic modalities, including pharmacologic approaches, such as tricyclic antidepressants or MAO inhibitors;

(f) in the terminal stages of disease, as adjunctive therapy in the treatment of chronic severe pain or chronic severe pain accompanied by depression;

(g) the clinical investigation of the effects of the drugs, in which case the practitioner shall submit to the division a written investigative protocol for its review and approval before the investigation has begun. The investigation shall be conducted in strict compliance with the investigative protocol, and the practitioner shall, within 60 days following the conclusion of the investigation, submit to the division a written report detailing the findings and conclusions of the investigation; or

(h) in treatment of depression associated with medical illness after due consideration of other therapeutic modalities.

(12) A practitioner may prescribe, dispense or administer a Schedule II controlled stimulant when properly indicated for any purpose listed in Subsection (11), provided that all of the following conditions are met:

(a) before initiating treatment utilizing a Schedule II controlled stimulant, the practitioner obtains an appropriate history and physical examination, and rules out the existence of any recognized contraindications to the use of the controlled substance to be utilized;

(b) the practitioner shall not prescribe, dispense or administer any Schedule II controlled stimulant when he knows or has reason to believe that a recognized contraindication to its use exists;

(c) the practitioner shall not prescribe, dispense or administer any Schedule II controlled stimulant in the treatment of a patient who he knows or should know is pregnant; and

(d) the practitioner shall not initiate or shall discontinue prescribing, dispensing or administering all Schedule II controlled stimulants immediately upon ascertaining or having reason to believe that the patient has consumed or disposed of any controlled stimulant other than in compliance with the treating practitioner's directions.

KEY: controlled substances, licensing

~~May 19, 1998~~ 2002

Notice of Continuation May 9, 2002

58-1-106(1)

58-37-6(1)

58-37-7.5(7)

to Utah Code Section 61-2-10. Section R162-6-2 is also renumbered because of the deletion of Subsection R162-6-2(6.2.4).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-2-5.5(1)(a)(v)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--This rules governs the conduct of real estate licensees, not state employees. The Division does not anticipate any increased or decreased investigation and enforcement costs as a result of these changes.

❖ LOCAL GOVERNMENTS: None--Local government is not affected by this rule since local governments are not licensees of the Division of Real Estate.

❖ OTHER PERSONS: There may be a slight financial benefit to members of the public who deal with real estate agents and brokers because it will be easier for broker and agents to offer various gifts to buyers and sellers who use the services of a brokerage.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs are anticipated because this rule change does not require licensees to take any action which would cost them money.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There appear to be no negative fiscal impacts for the reasons stated above.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at swismer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/14/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: Ted Boyer Jr., Executive Director

Commerce, Real Estate
R162-6
 Licensee Conduct

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25020

FILED: 06/24/2002, 15:55

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To make it clear to licensees that they may not represent the opposing party in a transaction if they are themselves a party to the transaction; to make technical corrections; to delete a burdensome requirement from Section Subsection R162-6-2(6.2.13) that does not appear to be necessary to protect the public; and to remove language which the Division believes is invalid.

SUMMARY OF THE RULE OR CHANGE: This rule change would prohibit a licensee from attempting to represent the opposing party in a transaction if he is himself a party to the transaction.

It clarifies that the term "lenders" in the prohibition against receiving referral fees from lenders includes mortgage brokers. It supplies an omitted example in current Subsection R162-6-2(6.2.1.3) and corrects the name of one of the approved forms in current Subsection R162-6-2(6.2.3). It deletes the requirement from current Subsection R162-6-2(6.2.13) that written consent be obtained from the party paying a commission before an inducement is offered to the other party to the transaction. Last, it deletes current Subsection R162-6-2(6.2.4) in its entirety because the Division believes that language is invalid because it is contrary

R162. Commerce, Real Estate.

R162-6. Licensee Conduct.

R162-6-1. Improper Practices.

6.1.1. False devices. A licensee shall not propose, prepare, or cause to be prepared any document, agreement, closing statement, or any other device or scheme, which does not reflect the true terms of the

transaction, nor shall a licensee knowingly participate in any transaction in which a similar device is used.

6.1.1.1. Loan Fraud. A licensee shall not participate in a transaction in which a buyer enters into any agreement that is not disclosed to the lender, which, if disclosed, may have a material effect on the terms or the granting of the loan.

6.1.1.2. Double Contracts. A licensee shall not use or propose the use of two or more purchase agreements, one of which is not made known to the prospective lender or loan guarantor.

6.1.2. Signs. It is prohibited for any licensee to have a sign on real property without the written consent of the property owner.

6.1.3. Licensee's Interest in a Transaction. A licensee shall not buy, sell, or lease or rent any real property as a principal, either directly or indirectly, without first disclosing in writing on the purchase agreement or the lease or rental agreement his true position as principal in the transaction. A licensee will be considered to be a principal for the purposes of this rule if he is an owner, officer, director, partner, member, or employee of an entity which is a principal in the transaction. In the case of a licensee who is a stockholder but who is not an officer, director or employee of a corporation which is a principal in the transaction, the licensee will be considered to be a principal for the purposes of this rule if he owns more than 10% of the stock of the corporation.

6.1.3.1 A licensee may not represent or attempt to represent a buyer in a transaction as a buyer's agent or as a limited agent if the licensee has an ownership interest, no matter how small, in a property which the buyer offers to purchase. A licensee may not represent or attempt to represent a buyer in a transaction as a buyer's agent or as a limited agent if the licensee is an officer, director, partner, member, employee, or stockholder of an entity that is the seller in the transaction.

6.1.3.2 A licensee may not represent or attempt to represent the seller in a transaction as a seller's agent or as a limited agent if: a) the licensee is the buyer in the transaction; b) the licensee has any ownership interest in an entity that is the buyer in the transaction; or c) the licensee is an officer, director, partner, member, employee, or stockholder of an entity that is the buyer in the transaction.

6.1.3.3 To avoid a potential breach of fiduciary duty or a conflict of interest, any existing listing agreement with the licensee's brokerage must be terminated prior to or at the time the licensee, or any entity in which the licensee is an officer, director, partner, member, employee, or stockholder, contracts to purchase the property that is the subject of the listing agreement.

6.1.4. Listing Content. The real estate licensee completing a listing agreement is responsible to make reasonable efforts to verify the accuracy and content of the listing.

6.1.4.1. Net listings are prohibited and shall not be taken by a licensee.

6.1.5. Advertising. This rule applies to all advertising materials, including newspaper, magazine, Internet, e-mail, radio, and television advertising, direct mail promotions, business cards, door hangers, and signs.

6.1.5.1. Any advertising by active licensees that does not include the name of the real estate brokerage as shown on Division records is prohibited except as otherwise stated herein.

6.1.5.2. If the licensee advertises property in which he has an ownership interest and the property is not listed, the ad need not appear over the name of the real estate brokerage if the ad includes the phrase "owner-agent" or the phrase "owner-broker".

6.1.5.3. Names of individual licensees may be advertised in addition to the brokerage name. If the names of individual licensees are included in advertising, the brokerage must be identified in a clear and

conspicuous manner. This requirement may be satisfied by identifying the brokerage in lettering which is at least one-half the size of the lettering which identifies the individual licensees.

6.1.5.4. Advertising teams, groups, or other marketing entities which are not licensed as brokerages is prohibited if the advertising states "owner-agent" or "owner-broker" instead of the brokerage name.

6.1.5.5. Advertising teams, groups, or other marketing entities which are not licensed as brokerages is permissible in advertising which includes the brokerage name upon the following conditions:

(a) The brokerage must be identified in a clear and conspicuous manner. This requirement may be satisfied by identifying the brokerage in lettering which is at least one-half the size of the lettering which identifies the team, group, or other marketing entity; and

(b) The advertising shall clearly indicate that the team, group, or other marketing entity is not itself a brokerage and that all licensees involved in the entity are affiliated with the brokerage named in the advertising.

6.1.5.6. If any photographs of personnel are used, the actual roles of any individuals who are not licensees must be identified in terms which make it clear that they are not licensees.

6.1.5.7. Any artwork or text which states or implies that licensees have a position or status other than that of sales agent or associate broker affiliated with a brokerage is prohibited.

6.1.5.8. Under no circumstances may a licensee advertise or offer to sell or lease property without the written consent of the owner of the property or the listing broker. Under no circumstances may a licensee advertise or offer to sell or lease property at a lower price than that listed without the written consent of the seller or lessor.

6.1.5.9. If an active licensee advertises to purchase or rent property, all advertising must contain the name of the licensee's real estate brokerage as shown on Division records.

6.1.6. Double Commissions. In order to avoid subjecting the seller to paying double commissions, licensees must not sell listed properties other than through the listing broker. A licensee shall not subject a principal to paying a double commission without the principal's informed consent.

6.1.6.1. A licensee shall not enter or attempt to enter into a concurrent agency representation agreement with a buyer or a seller, a lessor or a lessee, when the licensee knows or should know of an existing agency representation agreement with another licensee.

6.1.7. Retention of Buyer's Deposit. A principal broker holding an earnest money deposit shall not be entitled to any of the deposit without the written consent of the buyer and the seller.

6.1.8. Unprofessional conduct. No licensee shall engage in any of the practices described in Section 61-2-2, et seq., whether acting as agent or on his own account, in a manner which fails to conform with accepted standards of the real estate sales, leasing or management industries and which could jeopardize the public health, safety, or welfare and includes the violation of any provision of Section 61-2-2, et seq. or the rules of this chapter.

6.1.9. Finder's Fees. A licensee may not pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect in a real estate transaction, except as provided in this rule.

6.1.9.1. Token gifts. A licensee may give a gift valued at \$50 or less to an individual in appreciation for an unsolicited referral of a prospect which resulted in a real estate transaction.

6.1.10. Referral fees from lenders. A licensee may not receive a referral fee from a lender or a mortgage broker.

6.1.11. Failure to have written agency agreement. To avoid representing more than one party without the informed consent of all

parties, principal brokers and licensees acting on their behalf shall have written agency agreements with their principals. The failure to define an agency relationship in writing will be considered unprofessional conduct and grounds for disciplinary action by the Division.

6.1.11.1. A principal broker and licensees acting on his behalf who represent a seller shall have a written agency agreement with the seller defining the scope of the agency.

6.1.11.2. A principal broker and licensees acting on his behalf who represent a buyer shall have a written buyer agency agreement with the buyer defining the scope of the agency.

6.1.11.3. A principal broker and licensees acting on his behalf who represent both buyer and seller shall have written agency agreements with both buyer and seller which define the scope of the limited agency and which demonstrate that the principal broker has obtained the informed consent of both buyer and seller to the limited agency as set forth in Section R162-6.2.16.3.1.

6.1.11.3.1 A licensee may not act or attempt to act as a limited agent in any transaction in which: a) the licensee is a principal in the transaction; or b) any entity in which the licensee is an officer, director, partner, member, employee, or stockholder is a principal in the transaction.

6.1.11.4. A licensee affiliated with a brokerage other than the listing brokerage who wishes to act as a sub-agent for the seller, shall, prior to showing the seller's property:

(a) obtain permission from the principal broker with whom he is affiliated to act as a sub-agent;

(b) notify the listing brokerage that sub-agency is requested;

(c) enter into a written agreement with the listing brokerage consenting to the sub-agency and defining the scope of the agency; and

(d) obtain from the listing brokerage all information about the property which the listing brokerage has obtained.

6.1.11.5. A principal broker and licensees acting on his behalf who act as a property manager shall have a written property management agreement with the owner of the property defining the scope of the agency.

6.1.11.6. A principal broker and licensees acting on his behalf who represent a tenant shall have a written agreement with the tenant defining the scope of the agency.

R162-6-2. Standards of Practice.

6.2.1. Approved Forms. The following standard forms are approved by the Utah Real Estate Commission and the Office of the Attorney General for use by all licensees:

(a) September 30, 1999, Real Estate Purchase Contract (mandated use of this form is July 1, 2000);

(b) January 1, 1999 Real Estate Purchase Contract for Residential Construction;

(c) January 1, 1987, Uniform Real Estate Contract;

(d) October 1, 1983, All Inclusive Trust Deed;

(e) October 1, 1983, All Inclusive Promissory Note Secured by All Inclusive Trust Deed;

(f) January 1, 1999, Addendum/Counteroffer to Real Estate Purchase Contract;

(g) January 1, 1999, Seller Financing Addendum to Real Estate Purchase Contract;

(h) January 1, 1999, Survey Addendum to Real Estate Purchase Contract;

(i) January 1, 1999, Buyer Financial Information Sheet;

(j) January 1, 1999, FHA/VA Loan Addendum to Real Estate Purchase Contract;

(k) January 1, 1999, Assumption Addendum to Real Estate Purchase Contract;

(l) January 1, 1999, Lead-based Paint Addendum to Real Estate Purchase Contract;

(m) January 1, 1999, Disclosure and Acknowledgment Regarding Lead-based Paint and/or Lead-based Paint Hazards.

6.2.1.1. Forms Required for Closing. Principal brokers and associate brokers may fill out forms in addition to the standard state-approved forms if the additional forms are necessary to close a transaction. Examples include closing statements, and warranty or quit claim deeds.

6.2.1.2. Forms Prepared by an Attorney. Any licensee may fill out forms prepared by the attorney for the buyer or lessee or the attorney for the seller or lessor to be used in place of any form listed in R162-6.2.1 (a) through (g) if the buyer or lessee or the seller or lessor requests that other forms be used and the licensee verifies that the forms have in fact been drafted by the attorney for the buyer or lessee, or the attorney for the seller or lessor.

6.2.1.3. Additional Forms. If it is necessary for a licensee to use a form for which there is no state-approved form, for example a lease, the licensee may fill in the blanks on any form which has been prepared by an attorney, regardless of whether the attorney was employed for the purpose by the buyer, seller, lessor, lessee, brokerage, or an entity whose business enterprise is selling blank legal forms.

6.2.1.4. Standard Supplementary Clauses. There are Standard Supplementary Clauses approved by the Utah Real Estate Commission which may be added to Real Estate Purchase Contracts by all licensees.

The use of the Standard Supplementary Clauses will not be considered the unauthorized practice of law.

6.2.2. Copies of Agreement. After a purchase agreement is properly signed by both the buyer and seller, it is the responsibility of each participating licensee to cause copies thereof, bearing all signatures, to be delivered or mailed to the buyer and seller with whom the licensee is dealing. The licensee preparing the document shall not have the parties sign for a final copy of the document prior to all parties signing the contract evidencing agreement to the terms thereof. After a lease is properly signed by both landlord and tenant, it is the responsibility of the principal broker to cause copies of the lease to be delivered or mailed to the landlord or tenant with whom the brokerage or property management company is dealing.

6.2.3. Residential Construction Agreement. The ~~Earnest Money Sales Agreement~~ Real Estate Purchase Contract for Residential Construction must be used for all transactions for the construction of dwellings to be built or presently under construction for which a Certificate of Occupancy has not been issued.].

~~6.2.4. Employee Licensee. A real estate licensee working as a regular salaried employee as defined in section 1 of these rules, who sells real estate owned by the employer or leases real estate owned by the employer, may only do so and may only be compensated directly by the employer under one of the following conditions: (1) the licensee is a principal broker; (2) the employer has on its staff a principal broker with whom the licensee affiliates for sales or management transactions; or (3) the employer contracts with a principal broker so that all employed licensees are affiliated with and supervised by a principal broker.~~]

6.2.[5]4. Real Estate Auctions. A principal broker who contracts or in any manner affiliates with an auctioneer or auction company which is not licensed under the provisions of Section 61-2-1 et seq. for the purpose of enabling that auctioneer or auction company to auction real property in this state, shall be responsible to assure that all aspects of the auction comply with the requirements of this section and all other

laws otherwise applicable to real estate licensees in real estate transactions. Auctioneers and auction companies who are not licensed under the provisions of Section 61-2-1 et seq. may conduct auctions of real property located within this state upon the following conditions:

6.2.[5]4.1. Advertising. All advertising and promotional materials associated with an auction must conspicuously disclose that the auction is conducted under the supervision of a named principal broker licensed in this state; and

6.2.[5]4.2. Supervision. The auction must be conducted under the supervision of a principal broker licensed in this state who must be present at the auction; and

6.2.[5]4.3. Use of Approved Forms. Any purchase agreements used at the auction must meet the requirements of Section 61-2-20 and must be filled out by a Utah real estate licensee; and

6.2.[5]4.4. Placement of Deposits. All monies deposited at the auction must be placed either in the real estate trust account of the principal broker who is supervising the auction or in an escrow depository agreed to in writing by the parties to the transaction.

6.2.[5]4.5. Closing Arrangements. The principal broker supervising the auction shall be responsible to assure that adequate arrangements are made for the closing of each real estate transaction arising out of the auction.

6.2.[6]5. Guaranteed Sales. As used herein, the term "guaranteed sales plan" includes: (a) any plan in which a seller's real estate is guaranteed to be sold or; (b) any plan whereby a licensee or anyone affiliated with a licensee will purchase a seller's real estate if it is not purchased by a third party in the specified period of a listing or within some other specified period of time.

6.2.[6]5.1. In any real estate transaction involving a guaranteed sales plan, the licensee shall provide full disclosure as provided herein regarding the guarantee:

(a) Written Advertising. Any written advertisement by a licensee of a "guaranteed sales plan" shall include a statement advising the seller that if the seller is eligible, costs and conditions may apply and advising the seller to inquire of the licensee as to the terms of the guaranteed sales agreement. This information shall be set forth in print at least one-fourth as large as the largest print in the advertisement.

(b) Radio/Television Advertising. Any radio or television advertisement by a licensee of a "guaranteed sales plan" shall include a conspicuous statement advising if any conditions and limitations apply.

(c) Guaranteed Sales Agreements. Every guaranteed sales agreement must be in writing and contain all of the conditions and other terms under which the property is guaranteed to be sold or purchased, including the charges or other costs for the service or plan, the price for which the property will be sold or purchased and the approximate net proceeds the seller may reasonably expect to receive.

6.2.[7]6. Agency Disclosure. In every real estate transaction involving a licensee, as agent or principal, the licensee shall clearly disclose in writing to his respective client(s) or any unrepresented parties, his agency relationship(s). The disclosure shall be made prior to the parties entering into a binding agreement with each other. The disclosure shall become part of the permanent file.

6.2.[7]6.1. When a binding agreement is signed in a sales transaction, the prior agency disclosure shall be confirmed in the currently approved Real Estate Purchase Contract or, with substantially similar language, in a separate provision incorporated in or attached to that binding agreement.

6.2.[7]6.2. When a lease or rental agreement is signed, a separate provision shall be incorporated in or attached to it confirming the prior agency disclosure. The agency disclosure shall be in the form stated in R162-6.2.7.1, but shall substitute terms applicable for a rental

transaction for the terms "buyer", "seller", "listing agent", and "selling agent".

6.2.[7]6.3. Disclosure to other agents. An agent who has established an agency relationship with a principal shall disclose who he or she represents to another agent upon initial contact with the other agent.

6.2.[8]7. Duty to Inform. Sales agents and associate brokers must keep their principal broker or branch broker informed on a timely basis of all real estate transactions in which the licensee is involved, as agent or principal, in which the licensee has received funds on behalf of the principal broker or in which an offer has been written.

6.2.[9]8. Broker Supervision. Principal brokers and associate brokers who are branch brokers shall be responsible for exercising active supervision over the conduct of all licensees affiliated with them.

6.2.[9]8.1. A broker will not be held responsible for inadequate supervision if:

(a) An affiliated licensee violates a provision of Section 61-2-1, et seq., or the rules promulgated thereunder, in contravention of the supervising broker's specific written policies or instructions; and

(b) Reasonable procedures were established by the broker to ensure that licensees receive adequate supervision and the broker has followed those procedures; and

(c) Upon learning of the violation, the broker attempted to prevent or mitigate the damage; and

(d) The broker did not participate in the violation; and

(e) The broker did not ratify the violation; and

(f) The broker did not attempt to avoid learning of the violation.

6.2.[9]8.2. The existence of an independent contractor relationship or any other special compensation arrangement between the broker and affiliated licensees shall not release the broker and licensees of any duties, obligations, or responsibilities.

6.2.[40]9. Disclosure of Fees. If a real estate licensee who is acting as an agent in a transaction will receive any type of fee in connection with a real estate transaction in addition to a real estate commission, that fee must be disclosed in writing to all parties to the transaction.

6.2.[44]10. Fees from Builders. All fees paid to a licensee for referral of prospects to builders must be paid to the licensee by the principal broker with whom he is licensed and affiliated. All fees must be disclosed as required by R162-6.2.10.

6.2.[42]11. Fees from Manufactured Housing Dealers. If a licensee refers a prospect to a manufactured home dealer or a mobile home dealer, under terms as defined in Section 58-56-1, et seq., any fee paid for the referral of a prospect must be paid to him by the principal broker with whom he is licensed.

6.2.[43]12. Gifts and Inducements. A gift given by a principal broker to a buyer or seller, lessor or lessee, in a real estate transaction as an inducement to use the services of a real estate brokerage, or in appreciation for having used the services of a brokerage, is permissible and is not an illegal sharing of commission. If an inducement is to be offered to a buyer or seller, lessor or lessee, who will not be obligated to pay a real estate commission in a transaction, the principal broker must ~~obtain from~~ notify the party who will pay the commission ~~[written consent]~~ that the inducement will be offered. This rule does not authorize a principal broker to give any type of inducement that would violate the underwriting guidelines that apply to the loan for which a borrower has applied.

6.2.[44]13. "Due-On-Sale" Clauses. Real estate licensees have an affirmative duty to disclose in writing to buyers and sellers the existence or possible existence of a "due-on-sale" clause in an underlying encumbrance on real property, and the potential

consequences of selling or purchasing a property without obtaining the authorization of the holder of the underlying encumbrance.

6.2.[45]14. Personal Assistants. With the permission of the principal broker with whom the licensee is affiliated, the licensee may employ an unlicensed individual to provide services in connection with real estate transactions which do not require a real estate license, including the following examples:

(a) Clerical duties, including making appointments for prospects to meet with real estate licensees, but only if the contact has been initiated by the prospect and not by the unlicensed person;

(b) At an open house, distributing preprinted literature written by a licensee, so long as a licensee is present and the unlicensed person furnishes no additional information concerning the property or financing and does not become involved in negotiating, offering, selling or filling in contracts;

(c) Acting only as a courier service in delivering documents, picking up keys, or similar services, so long as the courier does not engage in any discussion of, or filling in of, the documents;

(d) Placing brokerage signs on listed properties;

(e) Having keys made for listed properties; and

(f) Securing public records from the County Recorders' Offices, zoning offices, sewer districts, water districts, or similar entities.

6.2.[45]14.1. If personal assistants are compensated for their work, they shall be compensated at a predetermined rate which is not contingent upon the occurrence of real estate transactions. Licensees may not share commissions with unlicensed persons who have assisted in transactions by performing the services listed in this rule.

6.2.[45]14.2. The licensee who hires the unlicensed person will be responsible for supervising the unlicensed person's activities, and shall ensure that the unlicensed person does not perform activity which requires a real estate license.

6.2.[45]14.3. Unlicensed individuals may not engage in telephone solicitation or other activity calculated to result in securing prospects for real estate transactions, except as provided in R162-6.2.15.(a) above.

6.2.[46]15. Fiduciary Duties. A principal broker and licensees acting on his behalf owe the following fiduciary duties to the principal:

6.2.[46]15.1. Duties of a seller's or lessor's agent. A principal broker and licensees acting on his behalf who act solely on behalf of the seller or the lessor owe the seller or the lessor the following fiduciary duties:

(a) Loyalty, which obligates the agent to act in the best interest of the seller or the lessor instead of all other interests, including the agent's own;

(b) Obedience, which obligates the agent to obey all lawful instructions from the seller or lessor;

(c) Full disclosure, which obligates the agent to tell the seller or lessor all material information which the agent learns about the buyer or lessee or about the transaction;

(d) Confidentiality, which prohibits the agent from disclosing any information given to the agent by the seller or lessor which would likely weaken the seller's or lessor's bargaining position if it were known, unless the agent has permission from the seller or lessor to disclose the information. This duty does not require the agent to withhold any known material fact concerning a defect in the property or the seller's or lessor's ability to perform his obligations;

(e) Reasonable care and diligence;

(f) Holding safe and accounting for all money or property entrusted to the agent; and

(g) Any additional duties created by the agency agreement.

6.2.[46]15.2. Duties of a buyer's or lessee's agent. A principal broker and licensees acting on his behalf who act solely on behalf of the buyer or lessee owe the buyer or lessee the following fiduciary duties:

(a) Loyalty, which obligates the agent to act in the best interest of the buyer or lessee instead of all other interests, including the agent's own;

(b) Obedience, which obligates the agent to obey all lawful instructions from the buyer or lessee;

(c) Full Disclosure, which obligates the agent to tell the buyer or lessee all material information which the agent learns about the property or the seller's or lessor's ability to perform his obligations;

(d) Confidentiality, which prohibits the agent from disclosing any information given to the agent by the buyer or lessee which would likely weaken the buyer's or lessee's bargaining position if it were known, unless the agent has permission from the buyer or lessee to disclose the information. This duty does not permit the agent to misrepresent, either affirmatively or by omission, the buyer's or lessee's financial condition or ability to perform;

(e) Reasonable care and diligence;

(f) Holding safe and accounting for all money or property entrusted to the agent; and

(g) Any additional duties created by the agency agreement.

6.2.[46]15.3. Duties of a limited agent. A principal broker and licensees acting on his behalf who act as agent for both seller and buyer, or lessor and lessee, commonly referred to as "dual agents," are limited agents since the fiduciary duties owed to seller and to buyer, or to lessor and lessee, are inherently contradictory. A principal broker and licensees acting on his behalf may act in this limited agency capacity only if the informed consent of both buyer and seller, or lessor and lessee, is obtained.

6.2.[46]15.3.1. In order to obtain informed consent, the principal broker or a licensee acting on his behalf shall clearly explain to both buyer and seller, or lessor and lessee, that they are each entitled to be represented by their own agent if they so choose, and shall obtain written agreement from both parties that they will each be giving up performance by the agent of the following fiduciary duties:

(a) The principal broker or a licensee acting on his behalf shall explain to buyer and seller, or lessor and lessee, that they are giving up their right to demand undivided loyalty from the agent, although the agent, acting in this neutral capacity, shall advance the interest of each party so long as it does not conflict with the interest of the other party. In the event of conflicting interests, the agent will be held to the standard of neutrality; and

(b) The principal broker or a licensee acting on his behalf shall explain to buyer and seller, or lessor and lessee, that there will be a conflict as to a limited agent's duties of confidentiality and full disclosure, and shall explain what kinds of information will be held confidential if told to a limited agent by either buyer or seller, or lessor and lessee, and what kinds of information will be disclosed if told to the limited agent by either party. The limited agent may not disclose any information given to the agent by either principal which would likely weaken that party's bargaining position if it were known, unless the agent has permission from the principal to disclose the information; and

(c) The principal broker or a licensee acting on his behalf shall explain to the buyer and seller, or lessor and lessee, that the limited agent will be required to disclose information given to the agent in confidence by one of the parties if failure to disclose the information would be a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations.

(d) The Division and the Commission shall consider use of consent language approved by the Division and the Commission to be informed consent.

6.2.~~[46]~~15.3.2. In addition, a limited agent owes the following fiduciary duties to all parties:

(a) Obedience, which obligates the limited agent to obey all lawful instructions from either the buyer or the seller, lessor and lessee, consistent with the agent's duty of neutrality;

(b) Reasonable care and diligence;

(c) Holding safe all money or property entrusted to the limited agent; and

(d) Any additional duties created by the agency agreement.

6.2.~~[46]~~15.4. Duties of a sub-agent. A principal broker and licensees acting on his behalf who act as sub-agents owe the same fiduciary duty to a principal as the brokerage retained by the principal.

KEY: real estate business

~~January 27, 2000~~2002

Notice of Continuation July 1, 1997

61-2-5.5



Financial Institutions, Credit Unions

R337-4

Establishment of "Credit Union Service Organizations".

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25058

FILED: 06/28/2002, 14:31

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To clarify that a Credit Union Service Organization (CUSO) comes under the jurisdiction of the Department of Financial Institutions; to clarify the services that can be provided by CUSOs; and to establish loan limitations for CUSOs.

SUMMARY OF THE RULE OR CHANGE: Amends the rule for CUSOs with respect to the jurisdiction of the Department of Financial Institution; clarifies the services that can be provided by CUSOs; and establishes loan limitations for CUSOs.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 7-1-505, and Subsections 7-1-301(5), 7-9-5(21), and 7-9-5(34)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: No impact on the State budget as compliance to the rule affects the financial institutions not the department.

❖ LOCAL GOVERNMENTS: The rule does not affect local government.

❖ OTHER PERSONS: State-chartered Credit Unions are currently required to comply with this rule and modifications to the rule should have minimal budgetary impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: State-chartered Credit Unions are currently required to comply with this rule and modifications to the rule should have minimal budgetary impact.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: State chartered Credit Unions are currently required to comply with this rule and modifications to the rule should have minimal budgetary impact.

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

FINANCIAL INSTITUTIONS

CREDIT UNIONS

Room 201

324 S STATE ST

SALT LAKE CITY UT 84111-2393, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Paul Allred at the above address, by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at PALLED@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/14/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 09/13/2002

AUTHORIZED BY: Edward Leary, Commissioner

R337. Financial Institutions, Credit Unions. R337-4. Establishment of "Credit Union Service Organizations".

R337-4-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Sections 7-1-301~~(3)(a)~~(15) and 7-1-505 and construes and applies to Sections 7-9-5(21) and 7-9-5(34).

(2) This rule applies to all state-chartered credit unions.

(3) The purpose of this rule is to define "credit union service organizations"~~[and]~~ outline the procedures and requirements for establishing these organizations, and establish rules governing the affairs of the organizations.

R337-4-2. Definitions.

(1) "Capital and surplus" means shares, deposits, reserves, and undivided earnings.

(2) "Commissioner" means the Commissioner of Financial Institutions.

(3) "Credit union service organization" means an organization owned by one or more credit unions which provides any of the following services~~[to its stockholder credit unions]:~~

~~— (a) Data processing services;~~

~~— (b) Promotion marketing and general management support services;~~

~~— (c) Access to sophisticated accounting systems;~~

~~— (d) Non-profit debt counseling services;~~

~~— (e) Management training and education to credit union personnel;~~

~~(f) Services related to processing, selling, or servicing mortgage loans;~~

~~(g) Credit card services;~~

~~(h) Automated teller machine services;~~

~~(i) Insurance agency services;~~

~~(j) Discount brokerage services;~~

~~(k) Shared branch facilities; and~~

~~Other services that are commonly associated with the routine operations of the credit unions.](a) Checking and currency services:~~

~~(i) Check cashing;~~

~~(ii) Coin and currency services, and~~

~~(iii) Money order, savings bonds, travelers checks, and purchase and sale of U.S. Mint commemorative coins services;~~

~~(b) Clerical, professional and management services:~~

~~(i) Accounting services;~~

~~(ii) Courier services;~~

~~(iii) Credit analysis;~~

~~(iv) Facsimile transmissions and copying services;~~

~~(v) Internal audits for credit unions;~~

~~(vi) Locator services;~~

~~(vii) Management and personnel training and support;~~

~~(viii) Marketing services;~~

~~(ix) Research services; and~~

~~(X) Supervisory committee audits;~~

~~(c) Consumer mortgage loan origination;~~

~~(d) Electronic transaction services:~~

~~(i) Automated teller machines (ATM) services;~~

~~(ii) Credit card and debit card services;~~

~~(iii) Data processing;~~

~~(iv) Electronic fund transfer (EFT) services;~~

~~(v) Electronic income tax filing;~~

~~(vi) Payment item processing;~~

~~(vii) Wire transfer services; and~~

~~(viii) Cyber financial services;~~

~~(e) Financial counseling services:~~

~~(i) Developing and administering Individual Retirement Accounts (IRA), Keogh, deferred compensation, and other personnel benefit plans;~~

~~(ii) Estate planning;~~

~~(iii) Financial planning and counseling;~~

~~(iv) Income tax preparation;~~

~~(v) Investment counseling; and~~

~~(vi) Retirement counseling;~~

~~(f) Fixed asset services:~~

~~(i) Management, development, sale, or lease of fixed assets; and~~

~~(ii) Sale, lease, or servicing of computer hardware or software;~~

~~(g) Insurance brokerage or agency;~~

~~(i) Agency for sale of insurance;~~

~~(ii) Provision of vehicle warranty programs; and~~

~~(iii) Provision of group purchasing programs;~~

~~(h) Leasing:~~

~~(i) Personal property; and~~

~~(ii) Real estate leasing of excess credit union service organization property;~~

~~(i) Loan support services:~~

~~(i) Debt collection services;~~

~~(ii) Loan processing, servicing, and sales; and~~

~~(iii) Sale of repossessed collateral;~~

~~(i) Loans and extensions of credit;~~

~~(k) Member business loans;~~

~~(l) Record retention, security and disaster recovery services;~~

~~(i) Alarm-monitoring and other security services;~~

~~(ii) Disaster recovery services;~~

~~(iii) Microfilm, microfiche, optical and electronic imaging, CD-ROM data storage and retrieval services;~~

~~(iv) Provision of forms and supplies; and~~

~~(v) Record retention and storage;~~

~~(m) Securities brokerage services;~~

~~(n) Shared credit union branch (service center) operations;~~

~~(o) Student loan origination;~~

~~(p) Travel agency services;~~

~~(q) Trust and trust-related services;~~

~~(i) Acting as administrator for prepaid legal service plans;~~

~~(ii) Acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity;~~

~~(iii) Trust services; and~~

~~(r) credit union service organization investments in non-credit union service organization service providers: In connection with providing a permissible service, a credit union service organization may invest in a non-credit union service organization service provider. The amount of the credit union service organization's investment is limited to the amount necessary to participate in the service provider, or a greater amount if necessary to receive a reduced price for goods or services.~~

~~(4) "Loans and extensions of credit" means any direct or indirect advance of funds in any manner whatsoever to a member, that is made on the basis of any obligation of that member to repay the funds, or repayable from specific property pledged by or on behalf of a member. "Loans and extensions of credit" includes:~~

~~(a) A contractual commitment to advance funds;~~

~~(b) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, or other evidence of indebtedness upon which a member may be liable as maker, drawer, endorser, guarantor, or surety;~~

~~(c) A participation without recourse, with regard to the participating credit union service organization.~~

~~(5) "Loans and extensions of credit" does not include:~~

~~(a) An endorsement or guarantee for the protection of a credit union and credit union service organization of any loan or other asset previously acquired by the credit union service organization in good faith or any indebtedness to a credit union and the credit union service organization for the purpose of protecting the credit union and the credit union service organization against loss or of giving financial assistance to it;~~

~~(b) The purchase of investment grade securities subject to a repurchase agreement in which the purchasing credit union has a perfected security interest, or where the securities are purchased from the state or any political subdivision thereof;~~

~~(c) Loans or extensions of credit which have become unenforceable by reason of discharge in bankruptcy or are no longer legally enforceable for other reasons.~~

~~(6) "Member" means a member of a stockholder credit union.~~

~~(7) "Participation" means the purchase or sale by a lender of a loan or part of a loan under circumstances in which the acquiring institution:~~

~~(a) Has no formal or direct role in establishing the terms and conditions binding the borrower; or~~

~~(b) is not a signatory of the loan agreement binding the borrower.~~

~~(8) "Participation agreement" means an agreement between the lead financial institution and the participant financial institution spelling out in detail the terms, conditions, and understandings between the parties to a loan participation.~~

(9) "Recourse" means an oral or written agreement whereby a selling institution of a loan or participation in a loan agrees to repurchase in whole or in part upon request of the purchaser or the seller.

(10) "Well capitalized" means "well capitalized" as defined in 12 U.S.C. Sec. 1790d(c)(1).

R337-4-3. Establishment and Approval of a Credit Union Service Organization.

(1) A credit union by action of its board of directors may ~~form~~ establish or invest in, or both, ~~in~~ a ^[2] credit union service organization ^[2] authorized to engage in the services specified in this rule ~~as defined in this rule~~ if:

(4)(a) The credit union has capital and surplus of \$500,000 or more ~~and~~;

(b) The credit union meets the net worth classification of "well capitalized".

(2) The total investments in, or loans to all service organizations ~~may~~ shall not exceed 5% of the capital and surplus of the credit union.

(3) The services performed by the ^[2] credit union service organization ^[2] are limited primarily to ~~credit union members and~~ stockholder credit unions and their members or members of credit unions contracting with the credit union service organization. However, for member business loans and loans and extensions of credit, the credit union service organization shall only serve members.

(4) ~~The commissioner has been given 30 days prior written notice of the proposed investment.~~ To establish a credit union service organization, a credit union shall file an application with the commissioner identifying the services the credit union service organization will provide.

~~(a) The application shall contain [ing] pro forma[s] statements or other information sufficient to determine [describing]~~

(a) ~~The~~ benefits the credit union service organization will create for the credit union ~~or such other information satisfactory to the department, to show that~~ or its members; and

(b) That the investment will not represent an unreasonable risk to the safety and soundness of the credit union ~~;~~ [

~~(b) within that time the commissioner has not issued an order disapproving the acquisition.]~~

(5) The commissioner shall approve or disapprove the application within 30 days after accepting it as complete. If the commissioner does not approve or disapprove an application within this time, it is considered approved. A credit union service organization approved prior to the effective date of the 2002 rule change need not reapply for authorization.

(6) A credit union may not change the type of services engaged in by the credit union service organization or engage in new services without providing 30 days written notice to the commissioner.

(7) The commissioner may at any time, based upon supervisory, legal, or safety and soundness reasons, limit the services engaged in by the credit union service organization.

(8) The credit union service organization shall comply with all relevant and applicable state and local laws and ordinances for the specific services offered.

(9) A credit union may establish or invest in, or both, a credit union service organization to provide services not set forth in this rule upon approval of the commissioner obtained pursuant to R337-4-3(4) and (5).

(10) A credit union service organization may provide services not set forth in this rule upon approval of the commissioner obtained pursuant to R337-4-3(4) and (5).

R337-4-4. Examination of Credit Union Service Organizations by Commissioner or Supervisor.

(1) The commissioner or the supervisor of credit unions shall visit and examine, or cause to be visited and examined, every credit union service organization as the commissioner considers necessary or advisable.

(2) At every examination of a credit union service organization, careful inquiry shall be made as to:

(a) the condition and resources of the credit union service organization examined;

(b) the mode of conducting and managing its affairs;

(c) the actions of its directors and officers;

(d) the investment and disposition of its funds;

(e) whether or not it is violating any provision of law relating to the credit union service organization or the business of the credit union service organization examined;

(f) whether or not it is complying with its articles of incorporation and bylaws; and

(g) such other matters as the commissioner may prescribe.

(3) The commissioner may, in the commissioner's discretion, accept examinations of any credit union service organization which are made by federal examiners or examiners from other states having jurisdiction over that credit union service organization in lieu of any examination required under the laws of this state.

R337-4-5. Prohibited Member Business Loans.

A credit union service organization may not extend a member business loan to the following individuals of the credit union service organization or credit unions which invest in or lend to the credit union service organization; or in entities in which these persons have control:

(1) board members;

(2) executive officers; and

(3) appointed committee members.

R337-4-6. Written Member Business Loan Policies.

A credit union service organization offering member business loans shall adopt specific written loan policies and review them at least annually. The credit union service organization shall establish written credit policies, loan security requirements, loan investment, personnel, and collection policies. At a minimum, the policies shall address the following:

(1) the types of member business loans to be made;

(2) the qualification and experience of personnel (minimum of two (2) years) involved in making and administering member business loans;

(3) a requirement to analyze and document the ability of a borrower to repay the loan;

(4) receipt and periodic updating of financial statements and other documentation, including tax returns;

(5) a requirement for sufficient documentation supporting each request to extend credit, or increase an existing loan or line of credit (except where the credit union service organization finds that the documentation requirements are not generally available for a particular type of member business loan and states the reasons for those findings in the credit union's written policies). At a minimum, the documentation shall include the following:

(a) balance sheet;

(b) cash flow analysis;

(c) income statement;

(d) tax data;

(e) analysis of leveraging; and

- (f) comparison with industry average or similar analysis;
- (6) the collateral requirements shall include:
 - (a) loan-to-value ratios;
 - (b) determination of value;
 - (c) determination of ownership;
 - (d) steps to secure various types of collateral; and
 - (e) how often the credit union service organization will reevaluate the value and marketability of collateral;
 - (7) the interest rates and maturities of member business loans; and
 - (8) general loan procedures which include:
 - (a) loan monitoring;
 - (b) servicing and follow-up; and
 - (c) collection.

R337-4-7. Allowance Account for Loan Losses.

A credit union service organization that makes member business loans is required to establish and maintain an allowance account for loan losses as set forth in Rule R337-5-3.

R337-4-8. Purchase and Sale of Loans and Participations in Loans.

(1) A credit union service organization shall have authority to make loan participation arrangements with other credit unions, credit union service organizations, or financial organizations in accordance with its written policies, if the credit union service organization that originates a loan for which participation arrangements are made retains an interest of at least 10% of the loan.

(2) A credit union service organization shall comply with Rule R331-12.

(3) The limitations set forth in Section 7-9-20(7)(f) apply to loan participations purchased or sold by a credit union service organization.

R337-4-9. Loan Limitations.

(1) The individual and aggregate loan limitations set forth in Section 7-9-20 shall apply to all loans and extensions of credit and member business loans made by a credit union and its wholly owned credit union service organization as if they were one entity.

(a) A credit union service organization may extend a member business loan to a person if the person is a business entity, and at least one individual having a controlling interest in that business entity has been a member of the credit union for at least six months prior to the date of the extension of the member business loan; or

(b) A credit union service organization may extend a member business loan to a person if the person is an individual, and the individual is a member of the credit union for at least six months prior to the date of the extension of the member business loan.

(2) The individual and aggregate loan limitations for a credit union service organization that is a non wholly owned subsidiary of a credit union shall be the same as set forth in Section 7-9-20. The limitation shall be determined by allocating loans made by the non wholly owned credit union service organization to its member credit unions on a pro-rata ownership basis.

(a) A credit union service organization that is a non wholly owned subsidiary of a credit union may extend a member business loan to a person if the person is a business entity, and at least one or more of the individuals having a controlling interest in that business entity has been a member of each of the credit unions participating in the credit union service organization for at least six months prior to the date of the extension of the member business loan; or

(b) A credit union service organization that is a non wholly owned subsidiary of a credit union may extend a member business loan to a person if the person is an individual, and the individual is a

member of each of the credit unions participating in the credit union service organization for at least six months prior to the date of the extension of the member business loan.

(3) Loan limitations shall be determined using the last quarterly report of condition filed with the Department.

R337-4-10. Trust Business.

(1) Only a credit union service organization that is a wholly owned subsidiary of a single credit union may seek authorization to become a trust company and engage in trust business in this state. A wholly owned credit union service organization seeking to become a trust company shall file an application as provided in Section 7-5-3 with the commissioner in the manner provided in Section 7-1-704, and shall pay the fee prescribed in Section 7-1-401(6).

(2) In addition to the criteria set forth in Section 7-5-3(2) the wholly owned credit union service organization shall have and maintain a minimum capital level of two million dollars (\$2,000,000). Capital shall be determined in accordance with Generally Accepted Accounting Principles (GAAP).

(3) Wholly owned credit union service organizations authorized to engage in trust business in this state shall comply with the requirements of Section 7-5-1 et. al.

(4) The safety and soundness examination of a wholly owned credit union service organization engaged in trust business may be performed in conjunction with the safety and soundness examination of the credit union. A trust examination fee shall be assessed in accordance with Section 7-1-401(2).

(5) Any loss, liability or contingent liability of a wholly owned credit union service organization operating as a trust company shall be offset first against the capital of the wholly owned credit union service organization and then against the capital of the credit union.

(6) A wholly owned credit union service organization that engages in trust business shall maintain its books according to GAAP. A wholly owned credit union service organization that engages in trust business shall annually make or cause to be made an audit of the credit union service organization's books by a licensed certified public accountant.

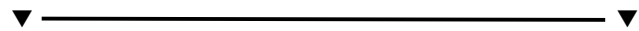
KEY: credit unions

~~November 3, 1997~~ 2002

Notice of Continuation September 10, 1997

7-1-301(3)(a)

7-9-5(34)



Natural Resources, Parks and Recreation **R651-206** Carrying Passengers for Hire

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE No.: 25015

FILED: 06/24/2002, 11:33

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To update and add the permits/licenses required by a person engaged in

carrying passengers for hire on Bear Lake, Flaming Gorge or Lake Powell.

SUMMARY OF THE RULE OR CHANGE: This rule amendment adds a Vessel Operator Permit required by person(s) leading passengers for hire. The rule already covers carrying passengers for hire. (DAR NOTE: A corresponding 120-day (emergency) rule is under DAR No. 24989 in this Bulletin, and is effective as of 07/01/2002.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 73-18-4(4)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no anticipated cost or savings to the State budget as this is updating license requirements of people carrying passengers and leading passengers for hire on Bear Lake, Flaming Gorge or Lake Powell. The state will, however, collect fees from an unknown number of operators who elect to lead people for hire.

❖ LOCAL GOVERNMENTS: The proposed rule amendment deals with changes for permits on certain Utah waters for which the state has safety responsibility. Therefore there are no anticipated costs or savings to local government.

❖ OTHER PERSONS: If a person should enter into the business of carrying or leading persons for hire on waters at Bear Lake, Flaming Gorge or Lake Powell and get the required permits, the person may be charged for the new permit named in this rule change. Cost will be \$60 per three years to the operator of the vessel. If a person leading persons for hire at Bear Lake, Flaming Gorge or Lake Powell does not have the proper permits when carrying or leading person(s) at Bear Lake, Flaming Gorge, or Lake Powell, then a ticket could be issued and a fine levied on that person. Fines imposed would be up to the judge, but other like fines are about \$100.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If a person should enter into the business of carrying or leading persons for hire on waters at Bear Lake, Flaming Gorge or Lake Powell and get the required permits, the person may be charged for the new permit named in this rule change. Cost will be \$60 per three years to the operator of the vessel. If a person leading persons for hire at Bear Lake, Flaming Gorge or Lake Powell does not have the proper permits when carrying or leading person(s) at Bear Lake, Flaming Gorge, or Lake Powell, then a ticket could be issued and a fine levied on that person. Fines imposed would be up to the judge, but other like fines are about \$100.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule amendment has no impact on business.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/14/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: Dave Morrow, Deputy Director

R651. Natural Resources, Parks and Recreation.

R651-206. Carrying Passengers for Hire.

R651-206-1. Vessel Operator Permit.

(1) As used in this rule: "Operator Permit" means a valid Utah Vessel Operator Permit issued by the division or a valid Coast Guard Motorboat Operator License. The operator permit must be accompanied by a current and original Standard American Red Cross First Aid Card or equivalent and a current and original American Red Cross or American Heart Association "CPR" card.

(2) No person shall operate a vessel engaged in carrying passengers for hire on any lake or reservoir of this state unless the individual has in his possession an Operator Permit or is operating under Section R651-206-2.

(3) To obtain a Utah Vessel Operator Permit, the applicant must be at least 18 years old, complete the prescribed form, possess the required first aid and CPR certification, successfully complete a written examination, pay a \$60 fee, and have 80 hours of experience in vessel operation, 20 hours of which was obtained operating an equivalent type and size of vessel which will be used for carriage of passengers. If the applicant fails to pass the written examination, there is a 7-day waiting period and a \$15 retest fee per attempt.

(4) A Utah Vessel Operator Permit is valid for three years from date of issue, unless suspended or revoked.

(5) A Utah Vessel Operator Permit may be renewed up to six months prior to expiration, upon completion of the prescribed form, presentation of required first aid and CPR certification, and payment of a \$45 fee. The renewed permit shall have the same month and day expiration date as the original permit.

(6) A Utah Vessel Operator Permit which has expired shall not be renewed but is required to obtain a new permit as outlined above.

(7) In the event a Utah Vessel Operator Permit is lost or stolen, a duplicate permit may be issued with the same expiration date as the original permit upon completion of the prescribed form, payment of a \$25 fee. An application for a duplicate permit must have original signatures and be accompanied by original documentation of required first aid and CPR certification.

(8) Current Utah Vessel Operator Permit holders shall notify the Division, within 30 days, of any change of address.

(9) A Utah Vessel Operator Permit may be suspended or revoked for a length of time determined by the division director, or individual designated by the division director, if one of the following occurs:

(a) the permit holder is convicted of boating under the influence of alcohol or any drug, or refuses to submit to any chemical test which determines blood or breath alcohol content;

(b) the permit holder's negligence causes personal injury or death as determined by due process of the law;

(c) the permit holder is convicted of three violations of Title 73 Chapter 18 or rules promulgated thereunder during a three-year period; or

(d) the division determines that the permit holder intentionally provided false or fictitious statements or qualifications to obtain the permit.

(10) A person shall not operate an unfamiliar vessel carrying passengers for hire or operate on unfamiliar water unless there is an operator permit holder aboard who is familiar with the vessel and the water area.

(11) A valid Coast Guard Motorboat Operator License must be possessed if engaging in carrying passengers for hire on Bear Lake, Flaming Gorge, or Lake Powell, or a Vessel Operator Permit if leading persons for hire.

R651-206-2. River Guide Permit.

(1) As used in this rule:

(a) "Agent" means a person(s) designated by an outfitting company to act in behalf of that company in certifying a river guide's experience.

(b) "Certifying experience" means river running experience obtained within ten years of the date of application for the guide permit.

(c) "Guide 1" means a nonrestrictive river guide permit.

(d) "Guide 2" means a restricted river guide permit, which is valid only on other rivers.

(e) "Guide 3" means an apprentice river guide permit, which is valid only when the holder is accompanied on the white water river by a qualified Guide 1 permit holder. A Guide 3 permit is also valid on other rivers, but must be accompanied by either a Guide 1 or 2 permit holder.

(f) "Guide 4" means a restricted apprentice river guide permit, which is valid only on other rivers when the holder is accompanied on the trip by a qualified Guide 1 or 2 permit holder.

(g) "Guide permit" means a valid Guide 1, 2, 3, or 4 permit issued by the division for carrying passengers for hire. For a Guide 1 or 2 permit to be valid they must be accompanied by a current "Emergency Response" American Red Cross First Aid Card or equivalent and an American Heart Association or an American Red Cross "CPR" Card. For a Guide 3 or 4 permit to be valid they must be accompanied by a current "Standard" American Red Cross First Aid Card or equivalent and an American Heart Association or an American Red Cross "CPR" Card. A photo copy of both sides of the required first aid and CPR certification cards is allowed.

(h) "Low capacity vessel" means a vessel with a carrying capacity of three or fewer occupants (e.g. canoe, kayak, inflatable kayak or similar vessel).

(i) "Other rivers" means all rivers, river sections, or both in Utah not defined in Subsection R651-202-2(1) as a whitewater river.

(j) "Whitewater river" means the following river sections: the Green and Yampa rivers within Dinosaur National Monument, the Green River in Desolation-Gray Canyon (Mile 96 to Mile 20), the Colorado River in Westwater Canyon, the Colorado River in Cataract Canyon, or other division recognized whitewater rivers in other states.

(2) No person shall operate a vessel engaged in carrying passengers for hire on any river of this state unless that person has in his possession the appropriate valid river guide permit. For low capacity vessels not operated by but led by a guide permit holder,

there shall be at least one qualified guide permit holder for every four low capacity vessels being led in the group.

(3) To qualify for a Guide 1 permit, the applicant must be at least 18 years of age, complete the prescribed form, be current in the required first aid and CPR certification, successfully complete a written examination, pay a \$30 fee and have operated a vessel on at least nine whitewater river sections. If the applicant fails to pass the written examination, there is a 7-day waiting period and a \$15 retest fee per attempt.

(4) To qualify for a Guide 2 permit, the applicant must be at least 18 years of age, complete the prescribed form, be current in the required first aid and CPR certification, successfully complete a written examination, pay a \$30 fee and have operated a vessel on at least six river sections. If the applicant fails to pass the written examination, there is a 7-day waiting period and a \$15 retest fee per attempt.

(5) To qualify for a Guide 3 permit, the applicant must be at least 18 years of age, complete the prescribed form, be current in the required first aid and CPR certification, pay a \$20 fee and have operated a vessel on at least three whitewater river sections.

(6) To qualify for a Guide 4 permit, the applicant must be at least 18 years of age, complete the prescribed form, be current in the required first aid and CPR certification, pay a \$20 fee and have operated a vessel on at least three river sections.

(7) Any person applying for a duplicate, renewal, or a new guide permit shall be employed by or be a prospective employee of an outfitting company currently registered with the division. The applicant shall be sponsored by that outfitting company, or be currently employed and sponsored by a federal, state or county agency. Permit applications must have original signatures and be accompanied by original documentation of required first aid and CPR certification.

(8) Guide 3 and 4 permits shall expire annually on December 31. Guide 1 and 2 permits shall expire three years from date of issuance.

(9) Guide 1 or 2 permits may be renewed up to six months prior to expiration upon completion of the prescribed form, presentation of current guide permit, required first aid and CPR certification, and payment of a \$30 fee. The renewed permit shall have the same month and day expiration date as the original permit. Any Guide 1 or 2 permit holder whose permit has expired shall be required to obtain a new Guide 1 or 2 permit as outlined above.

(10) In the event a guide permit is lost or stolen a duplicate guide permit may be issued with the same expiration date as the original permit upon completion of the prescribed form, furnishing the required information as described in (7) above and payment of the required fee. The fee shall be \$15 for a Guide 1 or 2 permit, and \$15 for a Guide 3 or 4 permit.

(11) All boatman permits issued by the division are expired.

(12) Current Guide Permit holders shall notify the Division, within 30 days, of any change of address.

(13) A guide permit holder shall not carry passengers for hire on his first trip on an unfamiliar river unless there is a qualified Guide 1 or 2 permit holder aboard who has operated a similar vessel on that river segment.

(14) A guide permit may be suspended or revoked for a length of time determined by the division director, or individual designated by the division director, if one of the following occurs:

(a) the guide permit holder is convicted of boating under the influence of alcohol or any drug, or refuses to submit to any chemical test which determines blood or breath alcohol content;

(b) the guide permit holder's negligence causes personal injury or death as determined by due process of the law;

(c) the guide permit holder is convicted of three violations of Title 73 Chapter 18 or rules promulgated thereunder during a three-year period;

(d) the division determines that the guide permit holder intentionally provided false or fictitious statements or qualifications to obtain the guide permit; or

(e) a guide permit holder has utilized a private river trip permit for carrying passengers for hire and has been prosecuted by the issuing agency and found guilty of the violation.

(15) Every outfitting company carrying passengers for hire on any river of this state shall register with the division annually prior to commencement of operation. The registration requires the completion of the prescribed form and providing the following: evidence of registration with the Department of Commerce, evidence of river trip authorization from the appropriate controlling state or federal agency, and payment of a \$200 fee.

(16) The agent shall certify and guarantee that each river guide sponsored by the outfitting company that he represents has obtained the necessary experience, as required above, depending on the type of guide permit applied for.

(17) An outfitting company's division registration may be suspended or revoked for a length of time determined by the division director, or individual designated by the division director, if one of the following occurs:

(a) the outfitting company's or agent's negligence caused personal injury or death as determined by due process of the law;

(b) the outfitting company or agent is convicted of three violations of Title 73 Chapter 18 or rules promulgated thereunder during a calendar year period;

(c) false or fictitious statements were certified or false qualifications were used to qualify a person to obtain a guide permit for an employee or others;

(d) the division determines that the outfitting company intentionally provided false or fictitious statements or qualifications when registering with the division;

(e) an outfitting company has utilized a private river trip permit for carrying passengers for hire and have been prosecuted by the issuing agency and found guilty of the violation; or

(f) the outfitting company used a guide without a valid guide permit or without the appropriate guide permit while engaging in carrying passengers for hire.

KEY: boating

[October 12, 1999] August 15, 2002

Notice of Continuation August 7, 2001

73-18-4(4)

▼ ————— ▼

**Natural Resources, Parks and
Recreation
R651-215
Personal Flotation Devices**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25014

FILED: 06/24/2002, 11:33

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment serves to define the type of kayak operator who does not require Type I personal flotation device (PFD). Hard-hulled kayak or white water canoe operators or a working river guide may wear a Type III PFD if approved on the label for this type of activity.

SUMMARY OF THE RULE OR CHANGE: Adding the words "hard-hulled" defines the type of kayak intended for use when the operator wears a Type III PFD instead of a Type I PFD. The intent is for Type III PFDs to be used in inflatable kayaks (rubber duckies). This change would allow only the Type III PFD to be used in hard-hulled kayaks. (DAR NOTE: A corresponding 120-day (emergency) rule is under DAR No. 24988 in this Bulletin, and is effective as of 07/01/2002.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 73-18-8

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This rule amendment defines "hard-hulled" when used with kayaks. There is no aggregate anticipated cost or savings to the state budget.

❖ **LOCAL GOVERNMENTS:** Use of this type of kayak is for waters and the use of certain types of flotation devices used when the kayak is "hard-hulled." Therefore, there is not anticipated cost or savings to the local government.

❖ **OTHER PERSONS:** This amendment is for clarification of who is required to wear a Type I PFD and who is required to wear a Type III PFD. Therefore, no costs or savings are anticipated to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment, if approved, should not create any compliance costs for affected persons. Either way, they have to use a PFD. This just defines the type for use with a "hard-hulled" kayak.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule amendment will not have a fiscal impact on business.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/14/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: Dave Morrow, Deputy Director

R651. Natural Resources, Parks and Recreation.

R651-215. Personal Flotation Devices.

R651-215-1. Definitions.

- (1) "PFD" means personal flotation device.
- (2) "Vessel length" is the measurement of the permanent part of the hull, from bow to stern, across the deck down the centerline, excluding sheer.
- (3) "Wear" means to have the PFD properly worn with all fasteners connected.
- (4) "White water canoe" means a one or two person capacity hard hulled canoe designed for white water activities and is equipped with: floatation (e.g., factory end chambers or float bags) and thigh straps or retention devices to hold the operator(s) in the vessel if it rolls.

R651-215-2. PFD Requirements for Vessels Less than 16 Feet in Length.

No person shall operate or give permission for the operation of a vessel less than 16 feet in length unless there is at least one Type I, II, or III PFD for each person on board.

R651-215-3. PFD Requirements for Vessels 16 Feet or More in Length.

No person shall operate or give permission for the operation of a vessel 16 feet or more in length unless there is at least one Type I, II, or III PFD for each person on board. In addition to the total number of PFD's, there shall also be one Type IV PFD on board.

R651-215-4. Types of Personal Flotation Devices.

Type I - Life Preserver - has ~~20~~22 pounds of flotation and will turn an unconscious person face up. Acceptable for use on all vessels.

Type II - Buoyant Vest - has 15.5 pounds of flotation and will turn most unconscious persons face up.

Type III - Special Purpose - has 15.5 pounds of buoyancy. There are many special designs for water sports.

Type IV - Throwable - has 16.5 pounds of flotation and is designed to be thrown, not worn. Must have as an additional device on class 1, 2, or 3 vessels.

Type V - Restricted Special Purpose Devices - approved only for the activities listed on the label.

R651-215-5. Immediately Available and Readily Accessible.

Type IV PFDs shall be immediately available; all other types of PFD shall be readily accessible, unless wearing is required.

R651-215-6. Type V PFD Carried in Lieu.

A Type V PFD may be carried in lieu of any required PFD, but only if the Type V PFD is approved for the activity in which the vessel is being used.

R651-215-7. Whitewater River PFD Requirements.

On whitewater rivers, as defined in Subsection R651-206-2 (1), Type I or Type III PFDs, if approved on the label for the activity, are required.

R651-215-8. Carrying Passengers for Hire PFD Requirements.

On rivers, if carrying passengers for hire, Type I PFDs are required, except hard-hulled kayak or white water canoe operators or a working river guide may wear a Type III PFD, if approved on the label for this activity. The required Type IV PFD shall be a ring life buoy on vessels 26 feet or more in length.

R651-215-9. River Throw Bag in Lieu of Type IV PFD.

On rivers, in lieu of the Type IV PFD requirement, a throw bag with a minimum of 40 feet of line may be carried.

R651-215-10. Passengers for Hire PFD Requirement.

When carrying passengers for hire, except on rivers, Type I PFDs are required. The required Type IV PFD shall be a ring life buoy on vessels 26 feet or more in length.

R651-215-11. Required Wearing of PFDs.

(1) An inflatable PFD may not be used to meet the requirements of this Section.

(2) All persons on board a personal watercraft or a sailboard shall wear a PFD.

(3) The operator of a vessel under 19 feet in length shall require each passenger 12 years of age or younger to wear a PFD. This rule is also applicable to vessels 19 feet or more in length, except when the child is inside the cabin area.

(4) On rivers, every person on board a vessel shall wear a PFD, except PFDs may be loosened or removed by persons 13 years of age or older on designated flat water areas as listed in Section R651-215-12. When carrying passengers for hire, the river guide is responsible for the passengers on his vessel to be in compliance with this Subsection.

R651-215-12. River Flat Water Areas.

(1) On the Green River:

(a) from Red Creek Camp below Red Creek Rapids to the Indian Crossing Boat Ramp;

(b) from 100 yards below Taylor Flats Bridge to the Utah/Colorado state line in Browns Park;

(c) within Dinosaur National Monument, from the mouth of Whirlpool Canyon to the head of Split Mountain Gorge;

(d) from the mouth of Split Mountain to Jack Creek in Desolation Canyon; and

(e) from the Green River Diversion Dam below Gray Canyon to the confluence with the Colorado River.

(2) On the Colorado River:

(a) from the Colorado/Utah state line to the Westwater Ranger Station;

(b) from Big Hole Canyon in Westwater Canyon to Onion Creek;

(c) from Drinks Canyon, mile 70, to the confluence with the Green River; and

(d) after the last active rapid in Cataract Canyon.

(3) On the San Juan River, after the last active rapid prior to Lake Powell.

KEY: boating
~~January 1, 1999~~ **August 15, 2002**
 Notice of Continuation August 7, 2001
 73-18-8



Natural Resources, Parks and
 Recreation
R651-216
 Navigation Lights - Note: Figures 1
 through 7 mentioned below are on file
 with the Utah Division of Parks and
 Recreation

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 25013
 FILED: 06/24/2002, 11:31

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To add a new section (R651-216-8) that prohibits the use of non-navigational lights on vessels, except to locate a hazard to navigation and/or non-navigational lights that may be used during a federally permitted parade.

SUMMARY OF THE RULE OR CHANGE: Vessels may only display lights as stated in the rule, except that a spotlight or other navigational light may be used intermittently to locate a hazard to navigation, or non-navigational lights may be used during a federally or state permitted marine parade. (DAR NOTE: A corresponding 120-day (emergency) rule is under DAR No. 24993 in this Bulletin, and is effective as of 07/01/2002.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 17-18-8(2)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: Locating hazards to navigation and spotlights will have no aggregate anticipated cost or savings to the state budget.
- ❖ LOCAL GOVERNMENTS: The state is responsible for water safety in the State of Utah. There will be no impact on local government with this amendment.
- ❖ OTHER PERSONS: The proposed change simply clarifies when non-navigational lights may be used. It imposes no new requirement with a related cost or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed change simply clarifies when non-navigational lights may be used. It imposes no new requirement with a related cost or savings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule amendment will have no impact on businesses.

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

NATURAL RESOURCES
 PARKS AND RECREATION
 Room 116
 1594 W NORTH TEMPLE
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/14/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: Dave Morrow, Deputy Director

R651. Natural Resources, Parks and Recreation.
R651-216. Navigation Lights - Note: Figures 1 through 7 mentioned below are on file with the Utah Division of Parks and Recreation.

R651-216-1.
 Motorboats of less than 40 feet in length shall exhibit the navigation lights shown in either figure 1, 2, or 3.

R651-216-2.
 Motorboats 40 feet in length to less than 65 feet in length shall exhibit the navigation lights shown in either figure 1 or 2.

R651-216-3.
 Sailboats shall exhibit the navigation lights shown in either figure 4, 5, or 6.

R651-216-4.
 A sailboat under motor power shall exhibit the motorboat navigation light requirements.

R651-216-5.
 A vessel manually propelled may exhibit the navigation lights required for sailboats or have ready at hand a flashlight or lighted lantern showing a white light which shall be displayed in sufficient time to prevent collision (figure 7).

R651-216-6.
 Vessels at anchor shall display an all-round white anchor light unless anchored in a designated mooring area.

.....

R651-216-8. Use of Non-Navigational Lights.
Vessels may only display lights as outlined above, except: (a) a spotlight or other non-navigational light may be used intermittently to locate a hazard to navigation, or (b) non-navigational lights may be used during a federal or state permitted marine parade.

KEY: boating

[+987]August 15, 2002

Notice of Continuation November 13, 2001
73-18-8(2)

▼ ————— ▼

Natural Resources, Parks and Recreation **R651-219** Additional Safety Equipment

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25010

FILED: 06/24/2002, 11:19

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To correct the word "paddles" to "propulsion" to match the reference title at Section R651-219-3 that reads "Spare Propulsion."

SUMMARY OF THE RULE OR CHANGE: Making this change allows the title and the reference to that title to be the same. It is a reference correction. (DAR NOTE: A corresponding 120-day (emergency) rule is under DAR No. 24990 in this Bulletin, and is effective as of 07/01/2002.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 73-18-8(6)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Changing one word that brings in line the rule and the reference will have no cost or savings to the State budget.

❖ LOCAL GOVERNMENTS: Local government has no jurisdiction over state water safety and this word change makes no cost or savings to the local government.

❖ OTHER PERSONS: Other persons are not affected by this word change, other than it now matches the title it refers to. Other persons will have no cost changes caused by this amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs as this rule change does not affect any person.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule amendment will have no fiscal impact on businesses.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/14/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: Dave Morrow, Deputy Director

R651. Natural Resources, Parks and Recreation.**R651-219. Additional Safety Equipment.****R651-219-1. Sound Producing Device.**

(1) Vessels 16 feet to less than 40 feet in length shall have on board a means of making an efficient sound, horn or whistle, capable of a four-to-six-second blast.

(2) Vessels 40 feet to less than 65 feet in length shall have on board a horn and a bell. The horn shall be capable of a four-to-six-second blast and audible for one-half mile. The bell shall be designed to give a clear tone.

R651-219-2. Bailing Device.

All vessels, not of self-bailing design, shall have on board an adequate bail bucket or be equipped with a mechanical means for pumping the bilge.

R651-219-3. Spare Propulsion.

Vessels less than 21 feet in length shall have on board at least one spare motor, paddle or oar capable of maneuvering the vessel when necessary. On rivers when one-or-two-man capacity vessels less than 16 feet in length are traveling in a group, the above requirement may be met by carrying one spare oar or paddle for every three vessels in the group. On hard hulled white water kayaks, paddles designed to be strapped to or worn on the hand must meet this requirement.

R651-219-4. Airboat Requirements.

Airboats operated on the Great Salt Lake and adjacent refuges shall also have on board a compass and one of the following: approved flares, a strobe light, or other visual distress signal.

R651-219-5. Equipment Good and Serviceable.

All required safety equipment shall be in good and serviceable condition.

R651-219-6. Law Enforcement Vessels.

No vessel operator except authorized law enforcement and emergency vessel operators may display red or blue flashing lights or sound a siren on any waters of this state.

R651-219-7. Equipment Exemptions.

(1) Sailboards and personal watercraft are exempt from the following rules: Section R651-219-2 bail buckets; Section R651-219-3 spare ~~paddles~~ propulsion; and Section R651-225-4 prohibiting riding on exterior surfaces.

(2) Vessels owned by the Lagoon Corporation and operated by its employees or customers under the controlled use and confines of the Lagoon Amusement Park waterways are exempt from the following Sections: R651-215-11 (3), R651-219-2, and R651-219-3.

(3) Vessels owned by the Salt Lake Airport Hilton Inn and operated by its employees or customers under the controlled use and confines of the Salt Lake Airport Hilton Inn waterways are exempt from the following sections: R651-219-2 and R651-219-3.

(4) Racing vessels participating in a sanctioned race may be exempted from certain equipment requirements by the division upon written request to the division. The equipment exemption shall only be in effect the day before and the day of the race if conditions of the exemption are met.

KEY: boating
~~[March 20, 2001]~~ **August 15, 2002**
Notice of Continuation November 13, 2001
73-18-8(6)



**Natural Resources, Parks and
 Recreation
 R651-221
 Boat Livery Agreements**

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 25017
 FILED: 06/24/2002, 11:39

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment will add an authorized agent of the division to receive a copy of the lease and rental agreement from the owner of a boat or livery or his/her representative.

SUMMARY OF THE RULE OR CHANGE: By adding "to an authorized agent of the Division," the proposed change clarifies who can review the lease or rental copy from the owner of a boat livery or his representative. (DAR NOTE: A corresponding 120-day (emergency) rule is under DAR No. 24995 in this Bulletin, and is effective as of 07/01/2002.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 73-18-10(2)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The proposed change is to identify the person(s) who will receive a copy of the lease or rental agreement.
- ❖ **LOCAL GOVERNMENTS:** There will be no new costs or savings to local government as the amendment is just to clarify who may receive copies of the legal documents for the division.
- ❖ **OTHER PERSONS:** No compliance costs as this rule amendment simply directs who will get a copy of the lease or rental contract/agreement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs as this rule amendment simply directs who will get a copy of the lease or rental contract/agreement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule amendment will have no fiscal impact on businesses.

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

**NATURAL RESOURCES
 PARKS AND RECREATION
 Room 116
 1594 W NORTH TEMPLE
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.**

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/14/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: Dave Morrow, Deputy Director

**R651. Natural Resources, Parks and Recreation.
 R651-221. Boat Livery Agreements.
 R651-221-1.**

The owner of a boat livery or his representative shall provide a copy of the lease or rental agreement, to an authorized agent of the Division, signed by the owner or his representative and by the person leasing or renting the vessel. The lease or rental agreement shall contain the following information and be carried on board the vessel: the vessel's assigned number; the period of time for which the vessel is leased or rented; and a check-off list of the required safety equipment. The registration card may be retained on shore by the boat livery.

KEY: boating
~~[1987]~~ **August 15, 2002**
Notice of Continuation November 13, 2001
73-18-10(2)



**Natural Resources, Parks and
 Recreation
 R651-223
 Vessel Accident Reporting**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 25012

FILED: 06/24/2002, 11:21

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Coast Guard increased the property damage amount for a reportable boating accident from \$500 to \$2,000 in property damage. This change will bring Parks into line with federal requirements.

SUMMARY OF THE RULE OR CHANGE: The Coast Guard increased the amount of property damage for reportable boating accidents from \$500 to \$2,000. This change will bring our rules in line with federal requirements. (DAR NOTE: A corresponding 120-day (emergency) rule is under DAR No. 24991 in this Bulletin, and is effective as of 07/01/2002.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 73-18-3

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated cost or savings to the State budget as this is a change that is required by federal regulations and laws. The rule change implements no new requirement, but merely adjusts the dollar amount of damage at which an accident becomes reportable.

❖ LOCAL GOVERNMENTS: Local government will have no anticipated costs or savings as the Boating Act and federal regulations govern through state and federal legislation and should therefore not affect local government.

❖ OTHER PERSONS: There are no anticipated cost or savings to other persons as this is a change that is required by federal regulations and laws. The rule change implements no new requirement, but merely adjusts the dollar amount of damage at which an accident becomes reportable.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The change in the reportable accidents would be handled by the insurance companies and the difference from \$500 to \$2,000 on reportable boating accidents (property damage.)

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment will have no fiscal impact on businesses.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/14/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: Dave Morrow, Deputy Director

R651. Natural Resources, Parks and Recreation.**R651-223. Vessel Accident Reporting.****R651-223-1. Notification Required.**

An operator shall immediately and by the quickest means of communication available notify the nearest state park ranger or other law enforcement officer of an accident that involves a vessel or its equipment when one of the following occurs: a person dies or disappears from a vessel under circumstances that indicate death; a person is injured and receives medical treatment beyond first aid; or property is damaged in excess of [~~\$500~~]\$2,000.

This notification shall include:

- (a) the date, time, and location of the occurrence;
- (b) the name of each person who died or disappeared;
- (c) the assigned number of the vessel; and
- (d) the name and address of the owner and operator.

R651-223-2. Other Notification.

If the operator cannot provide this notification, then another person on board shall make the notification required in rule R651-223-1.

R651-223-3. Report Required.

The operator, owner, or other person on board shall submit a completed and signed Owner/Operator Boating Accident Report (PR-53A) to the division within 10 days of the accident.

KEY: accidents, boating

~~[1994]~~August 15, 2002

Notice of Continuation January 26, 2001
73-18-13



Natural Resources, Parks and Recreation

R651-224

Towed Devices

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 25016

FILED: 06/24/2002, 11:32

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended as the result of legislative action in the 2002 general session. H.B. 4, repealing and reenacting Section 73-18-15.1, placed certain provisions of this rule in statute. (DAR NOTE:

H.B. 4 is found at UT L 2002 Ch 200 and was effective July 1, 2002.)

SUMMARY OF THE RULE OR CHANGE: This rule amendment places responsibility on the operator of a vessel to obey safety rules and regulations and to be responsible for the flag displayed by the observer. It also removes the age requirement for the observer, as well as the provision regarding towing prohibitions after sunset. Both these provisions are now found in Subsection 73-18-15.1. (DAR NOTE: A corresponding 120-day (emergency) rule is under DAR No. 24994 in this Bulletin, and is effective as of 07/01/2002.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 73-18-15.1(14)(a) and 73-18-15.1(14)(b)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The deleted provisions of this rule are now found in statute; moving them from rule to statute will create no costs or savings. The amendment at Section R651-224-3 simply clarifies an existing requirement, and will create no additional cost or savings.

❖ **LOCAL GOVERNMENTS:** The State is responsible for water safety on certain waters in the State of Utah, and therefore, there is anticipated cost or savings to local government.

❖ **OTHER PERSONS:** The deleted provisions of this rule are now found in statute; moving them from rule to statute will create no costs or savings. The amendment at Section R651-224-3 simply clarifies an existing requirement, and will create no additional cost or savings. Subsections 72-18-15.1(14)(a) and (b) are the new Boating Act and would govern this section. If a fine would be imposed, it would be in accordance with the Boating Laws and Rules of the State of Utah (Parks and Recreation).

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no way at this time to have a numerical answer for this. If operators of vessels don't obey the law, they could receive a citation. The deleted provisions of this rule are now found in statute; moving them from rule to statute will create no costs or savings. The amendment at Section R651-224-3 simply clarifies an existing requirement, and will create no additional cost or savings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment will have no fiscal impact on businesses.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/14/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: Dave Morrow, Deputy Director

R651. Natural Resources, Parks and Recreation.

R651-224. Towed Devices.

R651-224-1. Observer Required.

The operator of a vessel which is towing a person on water skis or other devices shall be responsible for maintaining a safe course with proper lookout. The progress of the person under tow shall be reported to the vessel operator by ~~[an onboard]~~ the observer ~~[who is at least eight years of age].~~

~~**R651-224-2. Prohibited After Sunset.**~~

~~The operator of a vessel shall not tow water skiers or other devices between sunset and sunrise.]~~

R651-224-3. Flag Required.

The operator of a vessel shall be responsible for a[A] flag ~~[shall]~~ to be displayed by the observer in a visible manner to other boaters in the area while the person to be towed is in the water, either preparing to be towed or finishing a tow. The flag shall be international orange at least 12 inches square and mounted on a handle.

R651-224-4. PFD to be Worn.

The operator of a vessel which is towing a person(s) on water skis or other devices shall require each person who is water skiing or using other devices to wear a United States Coast Guard approved personal flotation device (PFD), except an inflatable PFD may not be used.

R651-224-5. Capacity of Towing Vessel.

The operator of a vessel which is towing a person(s) on water skis or other devices shall use a vessel with sufficient carrying capacity, as defined by the manufacturer, for the occupant(s) onboard and the person(s) being towed.

KEY: boating, water skiing[≠]

~~[December 1, 1998]~~ **August 15, 2002**

**Notice of Continuation August 7, 2001
73-18-15**



**Natural Resources, Parks and
Recreation
R651-225
Navigation and Steering Rules**

NOTICE OF PROPOSED RULE

(Repeal)
DAR FILE NO.: 25011
FILED: 06/24/2002, 11:20

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To eliminate this rule in its entirety as it has been put into statute (see Subsections 73-18-15.1(1) through (13)).

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety. (DAR NOTE: A corresponding 120-day (emergency) rule is under DAR No. 24992 in this Bulletin, and is effective as of 07/01/2002.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 73-18-15.1

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: Elimination of the rule, because it is now in statute, will not create any costs or savings to the state budget.
- ❖ LOCAL GOVERNMENTS: Local government has no authority over state-operated waters and therefore elimination of this rule will have no anticipated cost or savings to local governments.
- ❖ OTHER PERSONS: The Navigation and Steering rules are now in statute and will be governed from that source. No changes anticipated that would affect other persons since it is a logistics change as to where it can be found.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Any compliance costs would be handled through the statute for navigation and steering of vessels in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule amendment will not have a fiscal impact on businesses.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/14/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: Dave Morrow, Deputy Director

R651. Natural Resources, Parks and Recreation.

~~**[R651-225. Navigation and Steering Rules.**~~

~~**R651-225-1. Rules of the Road.**~~

~~— (1) The operator of a vessel shall maintain a proper lookout by sight and hearing at all times to avoid the risk of collision.~~

~~— (2) When two motorboats approach each other where there is risk of collision, each shall alter course to the starboard and pass on the port side of the other.~~

~~— (3) When two motorboats are crossing paths and are at risk of a collision, the vessel which has the other vessel on its starboard side shall keep out of the way and yield right of way if necessary.~~

~~— (4) The operator of any vessel overtaking any other vessel shall keep out of the way of the vessel being overtaken.~~

~~— (5) A motorboat underway shall keep out of the way of sailboats and vessels not under command.~~

~~— (6) A sailboat underway shall keep out of the way of vessels not under command.~~

~~— (7) Where one of two vessels is to keep out of the way, the other vessel operator shall maintain his course and speed unless it becomes apparent the other vessel is not taking the appropriate action.~~

~~— (8) In narrow channels vessels underway shall keep to the right of the middle of the channel.~~

~~— (9) The operator of a vessel shall proceed at a safe speed at all times so that he can take proper and effective action to avoid collision and at an appropriate distance from the prevailing circumstances or conditions.~~

~~— (10) When two sailboats are approaching one another so as to involve risk of collision, one of them shall keep out of the way of the other as follows:~~

~~— (a) when each has the wind on a different side, the vessel which has the wind on the port side shall keep out of the way of the other;~~

~~— (b) when both have the wind on the same side, the vessel which is to the windward shall keep out of the way of the vessel which is to leeward; and~~

~~— (c) if the operator of a vessel with the wind on the port side sees a vessel to windward and cannot determine with certainty whether the other vessel has the wind on the port or on the starboard side, the operator shall keep out of way of the other vessel.~~

~~— Note: For the purpose of Rule R651-225-1 (10), the windward side shall be the side opposite that on which the mainsail is carried.~~

~~**R651-225-2. Speed and Proximity.**~~

~~— The operator of any vessel shall not exceed a wakeless speed when within 150 feet of: another vessel; a person in or floating on the water; a water skier (except those he is towing); a shore fisherman; a launching ramp; a dock; or a designated swimming area.~~

~~R651-225-3. Wake Damage.~~

~~The operator of a motorboat is responsible for any damage and/or injury caused by the wake produced by his vessel.~~

~~R651-225-4. Operator and Passenger Seating.~~

~~(1) The operator of a motorboat less than 16 feet in length shall not exceed a wakeless speed while any person is riding upon the bow decking, gunwales, transom, seatbacks, or motor cover. This rule also applies to motorboats 16 feet to 65 feet in length unless the vessel is designed or equipped with adequate safeguards such as railings, which would prevent a person from falling overboard.~~

~~(2) If a person is riding upon the bow decking of a motorboat which does not have designed seating for passengers, the person shall straddle one of the upright supports of the bow rail and must not block the vision of the operator.~~

KEY: boating

1987

Notice of Continuation November 13, 2001
73-18-15.1]



Natural Resources, Wildlife Resources
R657-37
Cooperative Wildlife Management Units
for Big Game

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 25009
FILED: 06/21/2002, 14:39

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Wildlife Board meetings conducted for taking public input and reviewing the Cooperative Wildlife Management Unit (CWMU) program for big game.

SUMMARY OF THE RULE OR CHANGE: Section R657-37-6 is being amended to allow the Division of Wildlife Resources (DWR) to approve the renewal of a CWMU Certificate of Registration annually, provided the CWMU landowner or operator's renewal application is the same as in the previous year. Provisions are being added to provide the criteria that the DWR will consider when renewing a CWMU Certificate of Registration and the procedures for forwarding the renewal to the Wildlife Board for approval of permit numbers. Section R657-37-7 is being amended to clarify that reciprocal hunting agreements within CWMUs may only be approved to raise funds to address joint habitat improvement projects, or address emergency situations limiting hunting opportunity on a CWMU. Section R657-37-12 is being amended to allow a 61-day season variance for buck deer and provide the criteria for establishing the season. Section R657-37-15 is being added to provide a CWMU Advisory Committee to hear complaints regarding CWMUs, review the operation of the CWMU program, and make advisory recommendations to the

DWR director or Wildlife Board regarding such matters. Other changes are made for consistency and clarity.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-23-3

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: DWR determines that these amendments may save costs to the state and DWR for improving or maintaining big game habitats, which may include an increase in the number of permits authorized and opportunity to hunt big game on private land. Allowing reciprocal hunting on CWMUs may increase the number of permits authorized on the CWMU, due to developed or improved habitats. DWR may save on costs related to depredation payments or issuing depredation permits, while CWMU landowners or operators who provide deer hunting opportunities may profit.

❖ LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ OTHER PERSONS: If a CWMU landowner or operator chooses to apply for the 61-consecutive day deer season, the CWMU landowner or operator may incur a minimal cost associated with resubmitting the CWMU Management Plan. This amendment does not impose any requirements on other persons, nor are other persons affected by the rule. DWR determines that these amendments do not generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If a CWMU landowner or operator chooses to apply for the 61-consecutive day deer season, the CWMU landowner or operator may incur a minimal cost associated with resubmitting the CWMU Management Plan. DWR determines that there are no additional compliance costs associated with these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule may create additional income for CWMU landowners or operators who qualify for the additional 61-consecutive day buck deer hunting season. However, those CWMU landowners or operators who do not qualify for the 61-consecutive day buck deer hunts may incur a loss due to the reduced number of permits the Wildlife Board authorizes and may impact the landowner's total income from operating a CWMU.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiesundell@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/14/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: Kevin Conway, Director

R657. Natural Resources, Wildlife Resources.**R657-37. Cooperative Wildlife Management Units for Big Game.****R657-37-1. Purpose and Authority.**

(1) Under authority of Section 23-23-3, this rule provides the standards and procedures applicable to Cooperative Wildlife Management units organized for the hunting of big game.

(2) Cooperative Wildlife Management units are established to:

- (a) increase wildlife resources;
- (b) provide income to landowners;
- (c) provide the general public access to private and public lands for hunting big game within a Cooperative Wildlife Management Unit;
- (d) create satisfying hunting opportunities; and
- (e) provide adequate protection to landowners who open their lands for hunting.

R657-37-2. Definitions.

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-23-2.

(2) In addition:

- (a) "CWMU" means Cooperative Wildlife Management Unit.
- (b) "CWMU agent" means a person appointed by a landowner association member or landowner association operator to protect private property within the CWMU.
- (c) "General public" means all persons except landowner association members, landowner association operators and their spouse or dependant children.
- (d) "Landowner association member" means a landowner or an organization of owners of private land who sign the CWMU application form.
- (e) "Landowner association operator" means a person designated by a landowner association member to operate the CWMU.
- (f) "Voucher" means a document issued by the division to a landowner association member or landowner association operator, allowing a landowner association member or landowner association operator, to designate who may purchase a CWMU big game hunting permit from a division office.

R657-37-3. Requirements for the Establishment of a Cooperative Wildlife Management Unit.

(1)(a) The minimum allowable acreage for a CWMU is 10,000 contiguous acres, except as provided in Subsection (2).

(b) The land comprising Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2)

and Rules R58-18 and R58-20, shall not be included as part of any big game CWMU.

(2)(a) The Wildlife Board may renew a CWMU that is less than 10,000 acres provided the CWMU legally possessed a 1999 CWMU Certificate of Registration, allowing for acreage less than 10,000 contiguous acres or allowing noncontiguous land parcels;

(b) the Wildlife Board may approve a new CWMU for deer or pronghorn that is at least 5,000 contiguous acres provided:

(i) the property is capable of independently maintaining the presence of the respective big game species and harboring them during the period of big game hunting;

(ii) the property is capable of accommodating the anticipated number of hunters and providing a reasonable hunting opportunity;

(iii) the property exhibits enforceable boundaries clearly identifiable to both the public and private hunters; and

(iv) the CWMU contributes to meeting division wildlife management objectives.

(3)(a) Cooperative Wildlife Management Units organized for hunting big game, shall consist of private land to the extent practicable.

(b) The Wildlife Board may approve a CWMU containing public land only if:

(i) the public land is completely surrounded by private land or is otherwise inaccessible to the general public;

(ii) the public land is necessary to establish an enforceable boundary clearly identifiable to both the general public and public and private permit holders; or

(iii) the public land is necessary to achieve statewide and unit management objectives.

(c) If any public land is included within a CWMU, the landowner association member must meet applicable federal and state land use requirements on the public land.

(d) The Wildlife Board shall increase the number of permits or hunting opportunities made available to the general public to reflect the proportional habitat on public land to private land within the CWMU.

R657-37-4. Cooperative Wildlife Management Unit Management Plan.

(1) The landowner association member must manage the CWMU in compliance with a CWMU Management Plan consistent with statewide and unit management objectives for the respective big game unit and approved by the Wildlife Board.

(2)(a) The CWMU Management Plan may be approved by the Wildlife Board for a period of five years, expiring on January 31 at the end of the five-year period.

(b) The CWMU Management Plan must be amended when the management plan or land ownership changes.

(c) The CWMU Management Plan may be amended as requested by the Wildlife Board, the division or the CWMU landowner association member or operator.

(3)(a) The CWMU Management Plan must include:

(i) big game management objectives for the CWMU that are consistent with statewide and unit management objectives for the respective big game unit, including population management and antlerless harvest;

(ii) procedures for obtaining age and harvest data;

(iii) an explanation of how comparable hunting opportunities will be provided to both the private and public permit holders on the CWMU as required in Section 23-23-7.5 and Rule R657-37-7(3)(a);

(iv) private and public permit ratio;

(v) rationale and purpose for including public land within the CWMU boundaries, if public land is included;

(vi) rules and guidelines used to regulate a permit holder's conduct as a guest on the CWMU;

(vii) rules and guidelines defining the CWMU landowner association member, landowner association operator or CWMU agent responsibilities;

(viii) County Recorder Plat Maps, dated by receipt of purchase within 30 days of the initial or renewal application deadline for a certificate of registration, depicting boundaries and ownership for all property within the CWMU;

(ix) two original 1:100,000 USGS maps, which must be filed in the appropriate regional division office and the Salt Lake office, depicting all interior and exterior boundaries of the proposed CWMU; and

(x) strategies and methods that avoid adverse impacts to adjacent landowners resulting from the operation of the CWMU.

(b) The division shall, upon the applicant's request, provide assistance in preparing the CWMU Management Plan.

R657-37-5. Application for Certificate of Registration.

(1) An application for a CWMU Certificate of Registration must be completed and returned to the regional division [~~regional~~] office where the proposed CWMU is located no later than August 1.

(2) The application must be accompanied by:

(a) the CWMU Management Plan as described in R657-37-4(3), including all maps;

(b) a petition containing the signature and acreage of each participating landowner agreeing to establish and operate the CWMU as provided in this rule and Title 23, Chapter 23 of the Wildlife Resources Code;

(c) the name of the designated landowner association operator; and

(d) [~~a \$5~~]the nonrefundable handling fee.

(3) The division may reject any application that is incomplete or completed incorrectly.

(4) The division shall forward the complete and correct application and required documentation to the Regional Advisory Councils and Wildlife Board for consideration.

(5) Upon receiving the application [~~, required documentation, appropriate fee~~] and recommendation from the division, the Wildlife Board may:

(a) authorize the issuance of a certificate of registration, for one year, allowing the landowner association member to operate a CWMU; or

(b) deny the application and provide the landowner association member with reasons for the decision.

(6)(a) A landowner association member or landowner association operator issued a certificate of registration must request an amendment to the original certificate of registration as provided in Subsection (b) or through the renewal process described in R657-37-6 for any variation in:

(i) the CWMU Management Plan; or

(ii) any other matter related to the management and operation of the CWMU not originally included in the certificate of registration.

(b) A request for an amendment to a certificate of registration to allow a CWMU permit holder to hunt within a reciprocal CWMU must be made in writing and submitted to the appropriate [~~division~~

~~regional supervisor and wildlife manager.]regional division office where the CWMU is located.~~

~~[(i) Upon approval by the regional supervisor]~~(i) Upon review by the region and Wildlife Section and upon approval by the director, an amendment to the original certificate of registration shall be issued in writing.

(7) The Wildlife Board shall consider any violation of the provisions of Title 23, Wildlife Resources Code and any information provided by the division, landowners, and the public in determining whether to authorize the issuance of a certificate of registration for a CWMU.

(8) A CWMU Certificate of Registration is issued on an annual basis and shall expire on January 31, providing the certificate of registration is not suspended or revoked prior to the expiration date.

(9) The CWMU application/agreement is binding upon the landowner association members, landowner association operators and all successors in interest to the CWMU property or the hunting rights thereon as it pertains to allowing public permit holders reasonable access to all CWMU property during the applicable hunting seasons for purposes of filling the permit.

R657-37-6. Renewal of a Certificate of Registration.

(1)(a) A CWMU Certificate of Registration must be renewed [~~by the Wildlife Board annually or when~~] annually and may be approved by the division, except as provided in Subsection (b).

~~(b) If any changes occur in the activities or information authorized [by the Wildlife Board] in the original certificate of registration or CWMU Management Plan, the renewal must be considered for approval by the Wildlife Board.~~

(2) An application for renewal of a certificate of registration must be completed and returned to the regional division [~~regional~~] office where the CWMU is established no later than September 1.

(3) The renewal application must identify all changes from the previous years CWMU Certificate of Registration or CWMU Management Plan.

(4) The renewal application must be accompanied by:

(a) the CWMU Management Plan, including all maps as described in R657-37-4(3), if the plan has expired or is being amended;

(b) a petition containing the signature and acreage of each participating landowner agreeing to establish and operate the CWMU as provided in this rule and Title 23, Chapter 23 of the Wildlife Resources Code;

(c) the name of the designated landowner association operator; and

(d) [~~a \$5~~]the nonrefundable handling fee.

(5) The division may reject any application that is incomplete or completed incorrectly.

~~(6) The division shall [forward the complete and correct renewal application to the Wildlife Board for consideration.~~

~~(7) The Wildlife Board shall] consider:~~

(a) the previous performance of the CWMU, including the actions of the landowner association member or landowner association operator when reviewing renewal of the certificate of registration; and

(b) any violation of Title 23, Wildlife Resources Code, this rule, stipulations contained in the certificate of registration and all other relevant information provided from any source related to the applicant's fitness to operate a CWMU.

~~(7) The division shall:~~

(a) approve the renewal Certificate of Registration and forward the permit recommendations to the Regional Advisory Councils and Wildlife Board; or

(b) deny the renewal Certificate of Registration and state the reasons for denial in writing to the applicant; and

(i) forward the application, reason for denial and recommendation to the Regional Advisory Councils and Wildlife Board; and

(iii) provide the applicant with information for seeking Wildlife Board review of the denial.

(8) Upon receiving the division's recommendation as provided in Subsection (b)(i) (8) Upon receiving the application, required documentation, appropriate fee and recommendation from the division], the Wildlife Board may consider: [-]

[(a) authorize the issuance of a certificate of registration allowing] (a) the previous performance of the CWMU, including the actions of the landowner association member or landowner association operator [to operate a CWMU; or] when reviewing renewal of the certificate of registration; and

[(b) deny the application and provide the landowner association member with reasons for the decision.] (b) any violation of Title 23, Wildlife Resources Code, this rule, stipulations contained in the certificate of registration and all other relevant information provided from any source related to the applicant's fitness to operate a CWMU.

(9) A CWMU Certificate of Registration for renewal is authorized annually and shall expire on January 31, providing the certificate of registration is not revoked or suspended prior to the expiration date.

R657-37-7. Operation by Landowner Association.

(1)(a) A CWMU must be operated by a landowner association member who owns land within the CWMU or a landowner association operator who leases or otherwise controls hunting on land within the CWMU.

(b) A landowner association member or landowner association operator may appoint CWMU agents to protect private property within the CWMU; however, the landowner association member or landowner association operator must assume ultimate responsibility for the operation of the CWMU.

(2)(a) A landowner association member or landowner association operator may enter into reciprocal agreements with ~~[any]~~ other landowner association ~~[member]~~ members or landowner association ~~[operator]~~ operators to allow hunters who have obtained a CWMU permit to hunt within each other's CWMUs as provided in Subsections R657-37-5(6)(b) and R657-37-~~[7(3)(b)]~~ 7(2)(b).

[(b)](b) Reciprocal hunting agreements may be approved only to:

(i) raise funds to address joint habitat improvement projects; or

(ii) address emergency situations limiting hunting opportunity on a CWMU.

(c) If a person is authorized to hunt in one or more CWMUs as provided in Subsection (a), written permission from the landowner association member or landowner association operator and written authorization from the division must be in the person's possession while hunting.

(3)(a) A landowner association member or landowner association operator must provide any person who has obtained a permit, including general public permittees, a comparable hunting opportunity in terms of hunting area and number of days to hunt big game.

(b) A person who has obtained a CWMU permit may hunt only in the CWMU for which the permit is issued, except as provided under Subsection (2).

(4)(a) Each landowner association member or landowner association operator must:

(i) clearly post all boundaries with signs that are 8 1/2 by 11 inches on a bright yellow background with black lettering, and that contain the language provided in Subsection (b); and

(ii) clearly display signs on the CWMU at all corners, fishing streams crossing property lines, road, gates, and rights-of-way entering the land.

(b) ~~[This is a]~~ A CWMU is created under an agreement between private landowners and the ~~[Utah Division of Wildlife Resources]~~ division, and approved by the ~~[Utah]~~ Wildlife Board. Only persons with a valid CWMU permit for ~~[this]~~ the CWMU may hunt moose, deer, elk or pronghorn within the boundaries of ~~[this]~~ the CWMU. The general public may use accessible public land portions of ~~[this]~~ the CWMU for all legal purposes, except hunting for moose, deer, elk or pronghorn.

(5) A landowner association member or landowner association operator must provide a written copy of its guidelines used to regulate a permit holder's conduct as a guest on the CWMU to each permit holder.

(6)(a) A CWMU and the division shall cooperatively address the needs of landowners who are negatively impacted by big game animals associated with the CWMU.

(b) The CWMU and the division shall cooperatively seek methods to prevent or mitigate agricultural depredation caused by big game animals associated with the CWMU.

R657-37-8. Cooperative Wildlife Management Unit Agents.

(1) A landowner association member may appoint CWMU agents to monitor access and protect the private property of the CWMU.

(2) Each CWMU agent must wear or have in possession a form of identification prescribed by the Wildlife Board which indicates the agent is a CWMU agent.

(3) A CWMU agent may refuse entry into the private land portions of a CWMU to any person, except owners of land within the unit and their employees, who:

(a) does not have in their possession a CWMU permit;

(b) endangers or has endangered human safety;

(c) damages or has damaged private property within a CWMU;

or

(d) fails or has failed to comply with reasonable rules of a landowner association.

(4) A CWMU agent may not refuse entry to the general public onto any public land within the boundaries of a CWMU that is otherwise accessible to the public for purposes other than hunting big game for which the CWMU is authorized.

(5) In performing the functions described in this section, a CWMU agent must comply with the relevant laws of this state.

R657-37-9. Permit Allocation.

(1) The division shall issue CWMU permits for hunting big game to permittees:

(a) qualifying through a general public drawing; or

(b) named by the landowner association member or landowner association operator.

(2) A landowner association member or landowner association operator shall be issued vouchers that may be used to purchase hunting permits from division offices.

(3) The division and the landowner association member must, in accordance with the tables provided in Subsection (4), jointly determine:

(a) the total number of permits to be issued for the CWMU; and

(b) the number of permits that may be offered by the landowner association member to the general public as defined in Subsection R657-37-2(c).

(4)(a) Permits may be allocated using an option from:

- (i) table one for moose and pronghorn; or
- (ii) table two for elk and deer.

(b) At least one buck or bull permit or at least 10% of the bucks or bulls permits, whichever is greater, must be made available to the general public through the big game drawing process.

(c) Permits shall not be issued for spike bull elk.

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(5) Antlerless permits must be allocated to the CWMU proportional to the ratio of numbers of big game species using the CWMU compared to the total herd population of the respective big game species on the herd management unit.

(6) A landowner association member or landowner association operator must provide access free of charge to any person who has received a CWMU permit through the general public big game drawings, except as provided in Section 23-23-11.

(7) If the division and the landowner association member disagree on the number of permits to be issued, the number of permits allocated for a species or sex of big game, or the method of take, the Wildlife Board shall make the determination based on the biological needs of the big game herds, including available forage, depredation, and other mitigating factors.

(8) A CWMU permit entitles the holder to hunt the species and sex of big game specified on the permit and only in accordance with the certificate of registration and the rules and proclamations of the Wildlife Board.

(9) Vouchers for antlerless permits may be designated by a landowner association member to any eligible person as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game, and Rule R657-42.

(11)(a) A complete list of the current CWMUs, big game hunts, and the date, time, and number of permits available for public drawing shall be published in the proclamation of the Wildlife Board for taking big game.

(b) The division reserves the exclusive right to list approved CWMUs in the proclamation of the Wildlife Board for taking big game. The division may unilaterally decline to list a CWMU in the proclamation where the unit is under investigation for wildlife violations, a portion of the property comprising the CWMU is transferred to a new owner, or any other condition or circumstance that calls into question the CWMUs ability or willingness to allow a meaningful hunting opportunity to all the public permit holders that would otherwise draw out on the public permits.

R657-37-10. Permit Cost.

The fee for permits allocated to any CWMU is the same as the applicable:

- (a) limited entry permit fee for elk and pronghorn;

(b) general season, limited entry or premium limited entry permit fee for deer; and

(c) once-in-a-lifetime permit fee for moose.

R657-37-11. Possession of Permits and License by Hunters - Restrictions.

(1) A person may not hunt in a CWMU without having in his possession:

- (a) a valid CWMU permit; and
- (b) the necessary hunting licenses, permits and tags.

(2) A CWMU permit:

(a) entitles the holder to hunt only on the CWMU specified on the permit pursuant to the rules of the Wildlife Board and does not entitle the holder to hunt on any other public or private land, except as provided under Subsection R657-37-7(2)(a); and

(b) constitutes written permission for trespass as required under Section 23-20-14.

(3) Prior to hunting on a CWMU each permittee must:

(a) contact the relevant landowner association member or landowner association operator and request the CWMU rules and requirements; and

(b) make arrangements with the landowner association member or landowner association operator for the hunt.

R657-37-12. Season Lengths.

(1) A landowner association member or landowner association operator may arrange for permittees to hunt on the CWMU during the following dates:

(a) an archery buck deer [and archery bull elk seasons] season may be established beginning with the opening of the general archery deer season through [October 31;] August 31 and during the sixty-one consecutive day buck deer season;

[(b) general season buck deer;] (b) an archery bull elk season may be established beginning with the opening of the general archery elk season through October 31 and during a bull elk season variance;

(c) general season bull elk, pronghorn, and moose seasons may be established September 1 through October 31, or the closing date of the general season for the respective species, whichever is later;

[(e) muzzleloader;] (d)(i) general buck deer seasons may be established for no longer than sixty-one consecutive days from September 1 through [October 31, or the closing date of the muzzleloader deer season on the state wildlife management unit that contains the CWMU, whichever is later;] November 10;

[(d) muzzleloader;] (ii) a landowner association member or landowner association operator electing to establish buck deer hunting in November must:

- (A) meet the CWMU management plan objectives;
- (B) not exceed average hunter density exhibited on the surrounding deer wildlife management units;
- (C) provide positive hunter satisfaction; and
- (D) maintain a harvest success rate at least equal to the surrounding deer wildlife management units;
- (E) designate the CWMU's sixty-one consecutive day season in the annual application, or if the sixty-one day consecutive season is not designated the season shall begin September 1;
- (F) allow public hunters the option to hunt in November;

(e) muzzleloader bull elk seasons may be established September 1 through the end of the general muzzleloader elk season and during a bull elk season variance;[:]

~~[(e)](f)~~ antlerless elk seasons may be established August 15 through January 31; and

~~[(f)](g)~~ antlerless deer seasons may be established August 15 through December 31.

(2) The Wildlife Board may ~~[make variances to the seasons provided in Subsection (1) for good cause if the variance was requested by the deadline for the application for the new or renewal certificate of registration as provided in Sections R657-37-5 and R657-37-6.]~~ authorize bulk elk hunting season variances only if the CWMU landowner association member or landowner association operator clearly demonstrates that November hunting is necessary on the CWMU.

R657-37-13. Rights-of-Way.

A landowner association member may not restrict established public access to public land enclosed by the CWMU.

R657-37-14. Discipline or Violation.

(1) The Wildlife Board may refuse to issue a certificate of registration to an applicant, and may refuse to renew or may revoke, restrict, place on probation, or otherwise act upon a certificate of registration where the holder has:

(a) violated any provision of this rule, the Wildlife Resources Code, the certificate of registration, or the CWMU application/agreement; or

(b) engaged in conduct that results in the conviction of, a plea of no contest to, or a plea held in abeyance to a crime of moral turpitude, or any other crime that when considered with the functions and responsibilities of a CWMU operator bears a reasonable relationship to the operator's or applicant's ability to safely and responsibly operate a CWMU.

(2) The procedures and rules governing any adverse action taken by the division or the Wildlife Board against a certificate of registration or an application for certificate of registration are set forth in Rule R657-2.

R657-37-15. Cooperative Wildlife Management Unit Advisory Committee.

(1) A CWMU Advisory Committee shall be created consisting of seven members nominated by the director and approved by the Wildlife Board.

(2) The committee shall include:

(a) two sportsmen representatives;

(b) two CWMU representatives;

(c) one agricultural representative;

(d) one at-large public representative; and

(e) one elected official.

(3) The committee shall be chaired by the Wildlife Section Chief, who shall be a non-voting member.

(4) The committee shall:

(a) hear complaints dealing with fair and equitable treatment of hunters on CWMUs;

(b) review the operation of the CWMU program; and

(c) make advisory recommendations to the director and Wildlife Board on the matters in Subsections (a) and (b).

(5) The Wildlife Section Chief shall determine the agenda, and time and location of the meetings.

(6) The director shall set staggered terms of appointment of members in order to assure that all committee members' terms shall expire after four years, and at least three members shall expire after the initial two years.

KEY: wildlife, cooperative wildlife management unit

~~[July 18, 2001]~~2002

Notice of Continuation May 3, 1999

23-23-3

Public Safety, Driver License **R708-7**

Functional Ability in Driving: Guidelines for Physicians

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25059

FILED: 06/28/2002, 15:48

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Medical Advisory Board has determined that Nurse Practitioners and Physician Assistants may complete the entire Driver License Functional Ability Evaluation reporting form if they comply with Subsections R708-7-8(2)(a), (b), and (c). Because of that determination, this change is needed.

SUMMARY OF THE RULE OR CHANGE: Nurse practitioners and physician assistants may only complete the entire Driver License Functional Ability Evaluation reporting form if they are licensed by the state as a health care provider, the physical examination does not require advanced or complex diagnosis or treatment, and in the event that advanced or complex medical diagnostic analysis is required, the licensed health care professional will promptly refer the patient to the appropriate physician, surgeon, etc. The language that was deleted in this rule is no longer needed because of the change for nurse practitioners and physicians.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 53-3-224, 53-3-303, and 53-3-304; and 49 CFR 391.43

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no cost or savings for the state budget because the rule changes do not change the procedures in handling applicants with medical concerns.

❖ LOCAL GOVERNMENTS: There is no cost or savings to local government because they are not involved in driver license Medical Advisory Board policy decisions.

❖ OTHER PERSONS: Driver license applicants who live in rural Utah will now be able to see a doctor or health care provider in a more timely manner which will allow them to get a driver license more quickly. In terms of cost or savings, applicants might see a savings if the health care provider charges less than a regular doctor.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to applicants because there are no procedural changes with the division.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses due to the changes in this rule.

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

PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY UT 84119-5595, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Vinn Roos at the above address, by phone at 801-965-4456, by FAX at 801-964-4482, or by Internet E-mail at vroos@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/14/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: Judy Hamaker Mann, Director

R708. Public Safety, Driver License.

R708-7. Functional Ability in Driving: Guidelines for Physicians.

R708-7-1. Purpose.

The purpose of this rule is to establish standards and guidelines to assist health care professionals in determining who may be impaired, the responsibilities of the health care professionals, and the driver's responsibilities regarding their health as it relates to highway safety.

R708-7-2. Authority.

This rule is authorized by Sections 53-3-224, 53-3-303, 53-3-304, and 49 CFR 391.43.

R708-7-3. Definitions.

(1) "Board" means the Driver License Medical Advisory Board created in Section 53-3-303.

(2) "Division" means the Driver License Division.

(3) "Health care professional" means a physician or surgeon licensed to practice medicine in the state, or when recommended by the Medical Advisory Board, may include other health care professionals licensed to conduct physical examinations in this state.

(4) "Impaired person" means a person who has a mental, emotional, or nonstable physical disability or disease that may impair the person's ability to exercise reasonable and ordinary control at all times over a motor vehicle while driving on the highway. It does not include a person having a nonprogressive or stable physical impairment that is objectively observable and that may be evaluated by a functional driving examination.

R708-7-4. Health and Driving.

(1) Every driver operating a vehicle is individually responsible for their health when driving. Each applicant for a Utah driver

license shall be required to answer personal health questions related to driving safety in accordance with recommendations made by the Driver License Medical Advisory Board pursuant to the provisions of Section 53-3-303(8). If the applicant experiences a significant health problem, the applicant is required to take a medical report form furnished by the division to a health care professional who provides all requested information, including a functional ability profile that reflects the applicant's medical condition.

(2) The health care professional will be expected to discuss the applicant's health as it may affect driving abilities and to make special recommendations in unusual circumstances. Based upon a completed functional profile, the division may deny driving privileges or issue a license with or without limitations in accordance with the standards described in this rule and lists, tables, and charts incorporated herein. Health care professionals have a responsibility to help reduce unsafe highway driving conditions by carefully applying these guidelines and standards, and by counseling with their patients about driving under medical constraints.

R708-7-5. Driver's Responsibilities.

(1) The 1979 Utah State Legislature has defined driver operating responsibilities in Section 53-3-303, related to physical, mental or emotional impairments of drivers. Drivers are:

(a) responsible to refrain from driving if there is uncertainty caused from having a physical, mental or emotional impairment which may affect driving safety;

(b) expected to seek competent medical evaluation and advice about the significance of any impairment that relates to driving vehicles safely; and

(c) responsible for reporting a "physical, mental or emotional impairment which may affect driving safety" to the Driver License Division in a timely manner.

R708-7-6. Health Care Professional's Responsibilities.

(1) Pursuant to Section 53-3-303, health care professionals shall:

(a) make reports to the division respecting impairments which may affect driving safety when requested by their patients. Nevertheless, the final responsibility for issuing a driver license remains with the director of the division;

(b) counsel their patients about how their condition affects safe driving. For example, if medication is prescribed for a patient which may cause changes in alertness or coordination, the health care professional shall advise the patient about how the medication can affect safe driving, and when it would be safe to operate a vehicle. Or, if a patient's visual acuity drops, the patient should similarly be advised, at least until corrective action has been taken to improve vision; and

(c) in accordance with Section 53-3-303(14)(b), be responsible for making available to their patients without reservation, their recommendations and appropriate information related to driving safety and responsibilities, whether defined by published guidelines or not.

R708-7-7. Driver License Medical Advisory Board.

(1) The Driver License Medical Advisory Board, as per Section 53-3-303, shall advise the director of the division and recommend written functional ability profile guidelines and standards for determining the physical, mental and emotional capabilities of applicants for licenses, appropriate to various driving abilities.

(2) In case of uncertainty of interpretation of these guidelines and standards, or in special circumstances, applicants may request a review of any division decision by a panel of board members. All of the actions of the director and board are subject to judicial review.

(3) In accordance with Section 53-3-303(8), the board shall administer the functional ability profile guidelines, which are intended to minimize such conflicts as the individual's desire to drive and the community's desire for highway safety.

R708-7-8. Persons Authorized to Complete ~~["Functional Ability Evaluation Medical Certificate] Report["] Form[s].~~

(1) Physicians and surgeons licensed to practice medicine may complete the entire Functional Ability Evaluation Medical [reporting]Report form.

(2) Nurse practitioners and physician assistants, and [4]in accordance with 49 CFR 391.43, physician assistants, advanced practice nurses, doctors of chiropractic and other health care professionals, may perform physical examinations and report their findings on the Functional Ability Evaluation ~~[m]Medical [Certificate]Report form~~ provided that:

(a) they are licensed by the state as health care professionals;

(b) the physical examination does not require advanced or complex diagnosis or treatment; and

(c) in the event that advanced or complex medical diagnostic analysis is required, ~~[or the patient profile level is more severe (numerically higher) than level 2 in category E; level 4 in categories A, B, D, F, J; and level 5 in categories C, G, H, I, K.]~~ the licensed health care professional, consistent with sound medical practices, will be expected to promptly refer the patient to the appropriate physician, surgeon or doctor of osteopathy for further evaluation and for completion of the functional ability evaluations certifications report in those categories.

~~—(3) Drivers whose profile levels do not meet the guidelines and standards listed in 2 (b) or (c) will be required to have a physician or surgeon complete the Functional Ability Evaluation Medical Certificate Report.]~~

R708-7-9. Functional Ability Profile Categories.

Functional ability of a driver to operate a vehicle safely may be affected by a wide range of physical, mental or emotional impairments. To simplify reporting and to make possible a comparison of relative risks and limitations, the Medical Advisory Board has adopted physical, emotional and behavioral functional ability profiles as defined in 12 separate categories, with multiple levels under each category.

R708-7-10. Use of the Functional Ability Profile.

(1) Health care professionals who evaluate their patients' health status for purposes of the patient obtaining a Utah driver license, shall report functional ability profiles on forms provided by the division.

(2) In assessing patient health and completing these report forms, health care professionals shall apply the standards and related information contained in the following lists, charts, and tables, which standards and guidelines are adopted and incorporated within this rule by reference, and are referred to in a booklet entitled, "Functional Ability in Driving: Guidelines And Standards for Health Care Professionals", (August 9, 2000 ed.). Specific categories are:

(a) "Category A" - diabetes and other metabolic conditions; narrative listing and table;

(b) "Category B" - cardiovascular; narrative listing and table;

(c) "Category C" - pulmonary; narrative listing and table;

(d) "Category D" - neurologic; narrative listing and table;

(e) "Category E" - epilepsy and other episodic conditions; narrative listing and table;

(f) "Category F" - learning, memory and communications; narrative listing and table;

(g) "Category G" - psychiatric or emotional conditions; narrative listing and table;

(h) "Category H" - alcohol and other drugs; narrative listing and table;

(i) "Category I" - visual acuity; narrative listing and table;

(j) "Category J" - musculoskeletal abnormality or chronic medical debility; narrative listing and table;

(k) "Category K" - alertness or sleep disorders; narrative listing and table; and

(L) "Category L" - hearing and balance; narrative listing and table.

(3) Copies of these guidelines are printed in a booklet and distributed by the division. These booklets may be obtained at no cost for health care professionals or \$5 per booklet for all other individuals. Copies may be obtained in person or by written request to the Driver License Division Medical Section at P.O. Box 30560, Salt Lake City, Utah 84130-0560.

KEY: administrative procedures, health care professionals, physicians

~~[November 7, 2000]2002~~

Notice of Continuation December 3, 1997

53-3-224

53-3-303

53-3-304

49 CFR 391.43



Public Safety, Fire Marshal
R710-1
Concerns Servicing Portable Fire
Extinguishers

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25066

FILED: 07/01/2002, 17:28

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met and proposed that Rule R710-1 be amended. The Board directed that the rule be amended to increase the fees for licenses.

SUMMARY OF THE RULE OR CHANGE: The Utah Fire Prevention Board met in a regularly scheduled Board meeting and proposed that the following be amended: in Subsections R710-1-10(10.1.1.1) and R710-1-10(10.1.1.2), the Board proposes to increase the license fees by 50% as approved in S.B. 1 by the Utah State Legislature. (DAR NOTE: S.B. 1

can be found at UT L 2002 Ch 277, and was effective 07/01/2002.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There would be an anticipated cost of \$200 to reprint the newly adopted rule and distribute it to all those affected by the rule change.

❖ LOCAL GOVERNMENTS: There would be no anticipated cost or savings to local government to instigate the proposed rule change because the proposed rule change does not effect local government.

❖ OTHER PERSONS: There would be an anticipated cost to those companies that wish to license to service portable fire extinguishers of \$100. The branch office license would increase \$50. The aggregate anticipated cost to other persons of the above mentioned license fee increase would be approximately \$9,700.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for a Portable Fire Extinguisher Concern licenses would be \$100 per license. The compliance cost for a Portable Fire Extinguisher Concern branch license would be \$50 per license.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be a fiscal impact assessed to those companies that license to service portable fire extinguishers in the State of Utah. This is the first increase in license fees in approximately 15 years. The concern owners will receive more time from the State Fire Marshal's Office to enforce this act. The concern owners are fully in favor of an increase in the license fee to pay for additional enforcement.

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

PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/14/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: Gary A. Wise, State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-1. Concerns Servicing Portable Fire Extinguishers.

R710-1-1. Adoption, Title, Purpose, and Prohibitions.

Pursuant to Section 53-7-204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules to provide regulation to those concerns that service Portable Fire Extinguishers.

There is adopted as part of these rules the following code which is incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 10, Standard for Portable Fire Extinguishers, 1998 edition, except as amended by provisions listed in R710-1-8, et seq.

1.2 A copy of the above mentioned standard is on file in the Office of Administrative Rules and the State Fire Marshal's Office.

1.3 Validity.

If any section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the SFM, such decision shall not affect the validity of the remaining portion of these rules.

1.4 Order of Precedence.

In the event of any difference between these rules and any adopted reference material, the text of these rules shall govern. When a specific provision varies from a general provision, the specific provision shall apply.

R710-1-2. Definitions.

2.1 "Annual" means a period of one year or 365 calendar days.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Branch Office" means any location, other than the primary business location, where business license, telephone, advertising and servicing equipment is utilized.

2.4 "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

2.5 "Concern" means a person, firm, corporation, partnership, or association, licensed by the SFM.

2.6 "Employee" means those persons who work for a licensed concern, and may include, but shall not be limited to, those persons who work on a contractual basis.

2.7 "License" means a written document issued by the SFM authorizing a concern to engage in the business of servicing portable fire extinguishers.

2.8 "NFPA" means National Fire Protection Association.

2.9 "Repair" means any work performed on, or to, any portable fire extinguisher, and not defined as charging, recharging, or hydrostatic testing.

2.10 "SFM" means State Fire Marshal.

2.11 "UCA" means Utah State Code Annotated 1953 as amended.

2.12 "USDOT" means the United States Department of Transportation.

R710-1-3. Licensing.

3.1 License Required.

No person or concern shall engage in the servicing of portable fire extinguishers without a license issued by the SFM, pursuant to these rules, expressly authorizing such concern to perform such acts.

3.2 Application.

3.2.1 Application for a license to engage in the business of, or perform the servicing of portable fire extinguishers, shall be made in writing to the SFM on forms provided by the SFM. A separate

application for license shall be made for each separate place or business location of the applicant (branch office).

3.2.2 The application for a license to engage in the business of, or perform the servicing of portable fire extinguishers, shall be accompanied with proof of public liability insurance. The public liability insurance shall be issued by a public liability insurance carrier showing coverage of at least \$100,000 for each incident, and \$300,000 in total coverage. The licensee shall notify the SFM within thirty days after the public liability insurance coverage required is no longer in effect for any reason.

3.3 Signature of Application.

The application shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association other than a partnership, it shall be signed by a principal officer.

3.4 Equipment Inspection.

The applicant or licensee shall allow the SFM, and any of his properly authorized deputies to enter, examine, and inspect any premise, building, room, establishment, or vehicle, used by the applicant in servicing portable fire extinguishers to determine compliance with the provisions of these rules. The inspection will be conducted during normal business hours, and the owner or manager will be given a minimum of 24 hours notice before the appointed inspection. The equipment inspection may be conducted on an annual basis, and consent to inspect will be obtained. The applicant, license holder or certified employee of the license holder, may be asked during the inspection by the SFM or any of his deputies, to demonstrate skills or knowledge used in servicing of portable fire extinguishers.

3.5 Issuance.

Following receipt of the properly completed application, and compliance with the provision of the statute and these rules, the SFM shall issue a license.

3.6 Original, Valid Date.

Original licenses shall be valid from the date of issuance through December 31st of the year in which issued. Thereafter, each license shall be renewed annually and renewals thereof shall be valid from January 1st through December 31st. Original licenses purchased after July 1st and up to November 1st can be purchased one time, at a one-half year fee. Licenses issued on or after November 1st will be valid through December 31st of the following year.

3.7 Renewal, Valid Date.

Application for renewal shall be made before January 1st of each year. Application for renewal shall be made in writing on forms provided by the SFM.

3.8 Refusal to Renew.

The SFM may refuse to renew any license in the same manner, and for any reason, that he is authorized, pursuant to Section 9 of these rules to deny a license. The applicant shall, upon such refusal, have the same rights as are granted by Section 9 of these rules to an applicant for an original license which has been denied by the SFM.

3.9 Change of Address.

Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of his address or location.

3.10 Under Another Name.

No licensee shall conduct his licensed business under a name other than the name or names which appears on his license.

3.11 List of Licensed Concerns.

The SFM shall make available, upon request and without cost, to the chief fire official of each local fire authority, the name,

address, and license number of each concern that is licensed pursuant to these rules. Upon request, single copies of such list shall be furnished, without cost, to a licensed concern.

3.12 Inspection.

The holder of any license shall submit such license for inspection upon request of the SFM, or any of his properly authorized deputies, or any local fire official.

3.13 SFM Notification and Certification of Registration.

Every licensed concern shall, within thirty (30) days of employment, and within thirty (30) days of termination of any employee, report to the SFM, the name, address, and certificate of registration number, of every person performing any act of servicing portable fire extinguishers for such licensed concern in writing.

3.14 Type.

3.14.1 Every license shall be identified by type. The type of license issued shall be determined on the basis of the act or acts performed by the licensee or by any of the employees. Every licensed concern shall be staffed by qualified personnel, and shall be properly equipped to perform the act or acts for the type of license issued.

3.14.2 Licenses shall authorize any one, or any combination of the following types of activities:

3.14.2.1 Type 1 - Conducting of all activities, as per (2), (3), and (4) below, or

3.14.2.2 Type 2 - Conducting hydrostatic tests of fire extinguisher cylinders that are listed with the United States Department of Transportation (USDOT), or

3.14.2.3 Type 3 - Conducting hydrostatic tests of fire extinguisher cylinders which are not listed with the United States Department of Transportation (USDOT), or

3.14.2.4 Type 4 - Servicing, inspecting, and maintaining all types of extinguishers, excluding hydrostatic testing.

3.14.3 No licensed concern shall be prohibited from taking orders for the performance of any act or acts for which the concern has not been licensed to perform. Such orders shall be consigned to another licensed concern that is authorized to perform such act or acts.

3.15 Examination.

Every person who performs any act or acts within the scope of the license shall pass an examination in accordance with the provisions of section 4 of these rules.

3.16 Duplicate License.

A duplicate license may be issued by the SFM to replace any previously issued license, which has been lost or destroyed, upon the submission of a written statement from the licensee to the SFM. Such statement shall attest to the fact that the license has been lost or destroyed.

3.17 Employer Responsibility.

Every concern shall be responsible for the acts of its employees insofar as such acts apply to the marketing, sale, distribution, and servicing of any portable fire extinguisher.

3.18 Minimum Age.

No license shall be issued to any person as licensee who is under eighteen (18) years of age.

3.19 Restrictive Use.

3.19.1 No license shall constitute authorization for any licensee, or any of his employees, to enter upon, or into, any property or building other than by consent of the owner or manager.

3.19.2 No license shall constitute authorization for any licensee, or any of his employees, to enforce any provision, or provisions, of this rule, or the International Fire Code.

3.20 Non-Transferable.

No license issued pursuant to this section shall be transferred from one concern to another.

3.21 Registration Number.

3.21.1 Every license shall be identified by a number, delineated as E-(number). Such number may be transferred from one concern to another only when approved by the SFM.

3.22 Minimum Materials and Equipment Required.

At each business location or vehicle of the applicant where servicing work is performed the following minimum material and equipment requirements shall be maintained:

3.22.1 Type 4 license:

3.22.1.1 Nitrogen tank.

3.22.1.2 Nitrogen regulator and hose assembly.

3.22.1.3 Minimum of twelve (12) recharge adapters.

3.22.1.4 Valve cleaning brush.

3.22.1.5 Scoop.

3.22.1.6 Funnel for A:B:C.

3.22.1.7 Funnel for B:C.

3.22.1.8 A closed receptacle for dry chemical.

3.22.1.9 Fifty pound scale.

3.22.1.10 A scale for cartridges.

3.22.1.11 'O' Ring lubricant.

3.22.1.12 Tag hole Punch.

3.22.1.13 Approved seals maximum fourteen (14) pound break strength.

3.22.1.14 A copy of NFPA Standard 10 (1998 Edition), statute, and these rules.

3.22.1.15 Minimum parts:

3.22.1.15.1 A supply of O rings needed for standard service.

3.22.1.15.2 A supply of valve stems for standard service.

3.22.1.15.3 A supply of nozzles and hoses for standard extinguishers.

3.22.1.15.4 Pressure gauges for extinguisher types: 100, 150, 175, 195, 240 lbs.

3.22.1.15.5 Carry handles and replacement handles for extinguishers.

3.22.1.15.6 Rivets or steel roll pins for handles and levers.

3.22.1.15.7 Dry chemical cartridges as required by manufacture specifications, to include 4 lb., 10 lb., 20 lb. and 30 lb.

3.22.1.15.8 Inspection light for cylinders.

3.22.1.15.9 A variety of pull pins to secure handle.

3.22.1.15.10 Carbon Dioxide continuity tester for hoses.

3.22.1.16.11 Halon closed recovery system.

3.22.2 Type 3 License:

3.22.2.1 Approved testing pump with a current calibration certificate for the attached gauges.

3.22.2.2 Test cage or suitable safety barrier.

3.22.2.3 Approved hydro test labels.

3.22.2.4 Hydrostatic test adapters or approved equal.

3.22.2.5 Heater which produces a heated air or dry air for drying cylinders, or other approved dryer not to exceed 150 degrees Far. (66 degrees C).

3.22.3 Type 2 License:

Current registration number from the United States Department of Transportation (USDOT), verifying the concern as a qualified cylinder requalification facility under the provisions of the Code of Federal Regulations, 49 CFR, Section 173.34, shall be maintained for all concerns holding a type 1 or 2 license. A copy of the certification letter must be submitted to the SFM. All equipment required to perform the functions allowed as a qualified cylinder

requalification facility, shall be maintained in good working order and available for inspection by the SFM.

3.22.4 Type 1 License:

All of the equipment, provisions, and numbers as required in License types 2, 3, and 4 shall be required for a Type 1 License.

3.23 Records.

Accurate records shall be maintained for five years back by the licensee of all service work performed. These records shall include the name and address of all servicing locations, and the date and name of the person performing the work. These records shall be made available to the SFM, or authorized deputies, upon request.

R710-1-4. Certificates of Registration.

4.1 Required Certificates of Registration.

No person shall service any portable fire extinguisher without a certificate of registration issued by the SFM pursuant to these rules expressly authorizing such person to perform such acts. The provisions of this section apply to the state, universities, a county, city, district, public authority, and any other political subdivision or public corporation in this State.

4.2 Exemptions.

The provisions of this section shall not apply to any person servicing any portable fire extinguisher owned by such person, when the portable fire extinguisher is not required by any statute, rule, or ordinance, to be provided or installed.

4.3 Application.

Application for a certificate of registration to service portable fire extinguishers shall be made in writing to the SFM on forms provided by him. The application shall be signed by the applicant.

4.4 Examination.

The SFM shall require all applicants for a certificate of registration to take and pass a written examination, which may be supplemented by practical tests, when deemed necessary, to determine the applicant's knowledge of servicing portable fire extinguishers. Picture identification of the applicant for a certificate of registration may be requested by the SFM or his deputies. Examinations will be given according to the following schedule:

4.4.1 On the first and third Tuesdays of each month. When holidays conflict with these days, the day immediately following will be used. An appointment shall be made to take an examination at least 24 hours in advance of the examination date.

4.4.2 Examinations may be given at various field locations as deemed necessary by the SFM. Appointments for field examinations are required.

4.5 Issuance.

Following receipt of the properly completed application, compliance with the provisions of these rules, and the successful completion of the required examination, the SFM shall issue a certificate of registration.

4.6 Original and Renewal Valid Date.

Original certificates of registration shall be valid from the date of issuance through December 31st of the year in which issued. Thereafter, each certificate of registration shall be renewed annually and renewals thereof shall be valid from January 1st through December 31st. Original certificates purchased after July 1st and up to November 1st can be purchased one time, at a one-half year fee. Certificates of registration issued on or after November 1st will be valid through December 31st of the following year.

4.7 Renewal Date.

Application for renewal shall be made by January 1st of each year. Application for renewal shall be made in writing on forms provided by the SFM.

4.8 Re-examination.

Every holder of a valid certificate of registration shall take a re-examination every five years, from date of original certificate, to comply with the provisions of Section 4.4 of these rules as follows:

4.8.1 The re-examination to comply with the provisions of Section 4.4 of these rules shall consist of one 25 question open book examination, to be mailed to the certificate holder at least 60 days before the renewal date.

4.8.2 The 25 question re-examination will consist of questions that focus on changes in the last five years to NFPA 10, the statute, or the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or the SFM.

4.8.3 The certificate holder is responsible to complete the re-examination and return it to the SFM in sufficient time to renew.

4.8.4 The certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

4.9 Refusal to Renew.

The SFM may refuse to renew any certificate of registration in the same manner and for any reason that he is authorized, pursuant to Section 10, to deny an original certificate of registration. The applicant shall, upon such refusal, have the same rights as are granted by Section 10 of these rules to an applicant for an original certificate of registration which has been denied by the SFM.

4.10 Inspection.

The holder of a certificate of registration shall submit such certificate for inspection, upon request of the SFM, any of his properly authorized deputies, or any local fire official.

4.11 Type.

4.11.1 Every certificate of registration shall indicate the type of act or acts to be performed and for which the applicant has qualified.

4.11.2 No person holding a valid certificate of registration shall be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

4.12 Change of Address.

Any change in home address of any holder of a valid certificate of registration shall be reported in writing, by the registered person to the SFM within thirty (30) days of such change. Such change shall also be made on the reverse side of the certificate of registration by the holder.

4.13 Duplicate.

A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the SFM from the certified person. Such statement shall attest to the certificate having been lost or destroyed.

4.14 Minimum Age.

No certificate of registration shall be issued to any person who is under 18 years of age.

4.15 Restrictive Use.

4.15.1 A certificate of registration may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

4.15.2 Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a certificate of registration has qualified shall be permissible by such applicant.

4.16 Contents of Examination.

4.16.1 The examination required under the provisions of Section 3.14, shall include a written test of the applicant's knowledge of the provisions of these rules, and may include an actual demonstration of his ability to perform the acts indicated on the application.

4.16.2 Examinations shall, in the opinion of the SFM, be compatible with the type of work to be performed by the applicant and with the equipment with which he will function.

4.16.3 The written portion of the examination shall be divided into the following groups:

4.16.3.1 Provisions relating to these Rules Governing Concerns Servicing Portable Fire Extinguishers.

4.16.3.2 Hydrostatic testing of fire extinguisher cylinders that are listed with the USDOT.

4.16.3.3 Hydrostatic testing of fire extinguisher cylinders which are not listed with the USDOT.

4.16.3.4 Accepted servicing and inspection practices of portable fire extinguishers as required in NFPA, Standard 10.

4.17 Right to Contest.

4.17.1 Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination.

4.17.2 Every contention as to the validity of individual questions of an examination shall be made in writing within 48 hours after taking said examination. Contentions shall state the reason for the objection.

4.17.3 The decision as to the action to be taken on the submitted contention shall be by the SFM, and such decision shall be final.

4.17.4 The decision made by the SFM, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

4.18 Passing Grade.

To successfully pass the written examination, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken. Each portion of the examination shall be separately graded.

4.19 Non-Transferable.

Certificates of Registration shall not be transferable. Individual certificates of registration shall be carried by the person to whom issued.

4.20 New Employees.

New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid certificate of registration for a period not to exceed forty-five (45) days from the initial date of employment. By the end of such period, new employees shall have taken and passed the required examination.

4.21 Certificate Identification.

Every certificate shall be identified by a number, delineated as EE-(number). Such number shall not be transferred from one person to another.

R710-1-5. Seal of Registration.

5.1 Description.

The official seal of registration of the SFM shall consist of the following:

5.1.1 The image of the State of Utah shall be in the center with an outer ring stating, "Utah State Fire Marshal".

5.1.1.1 The top portion of the outer ring shall have the wording "Utah State".

5.1.1.2 The Bottom portion of the outer ring shall have the wording "Fire Marshal".

5.1.2 Appending above the top portion and in a centered position, shall be a box provided for displaying the type of license.

5.1.3 Appending below the bottom portion and in a centered position, shall be a box provided for the displaying of the license number assigned to the concern.

5.2 Use of Seal.

No person or concern shall produce, reproduce, or use this seal in any manner or for any purpose except as herein provided.

5.3 Permissive Use.

Licensed concerns shall use the Seal of Registration on every service tag conforming to section 10.

5.4 Cease Use Order.

No person or concern shall continue the use of the Seal of Registration in any manner or for any purpose after receipt of a notice in writing from the SFM to that effect, or upon the suspension or revocation of the concern's license.

5.5 Legibility.

Every reproduction of the Seal of Registration and every letter and number placed thereon, shall be of sufficient size to render such seal, letter, and number distinct and clearly legible.

R710-1-6. Service Tags.

6.1 Size and Color.

Tags shall be not more than five and one-half inches (5-1/2") in height, nor less than four and one-half inches (4-1/2") in height, and not more than three inches (3") in width, nor less than two and one-half inches (2-1/2") in width.

6.2 Attaching Tag.

One service tag shall be attached to each portable fire extinguisher in such a position as to be conveniently inspected.

6.3 Tag Information.

6.3.1 Service tags shall bear the following information:

6.3.1.1 Provisions of Section 6.7.

6.3.1.2 Type of license.

6.3.1.3 Approved Seal of Registration of the SFM.

6.3.1.4 License registration "E" number.

6.3.1.5 Certificate of registration "EE" number of individual who performed or supervised the service or services performed.

6.3.1.6 Signature of individual whose certificate of registration number appears on the tag.

6.3.1.7 Concern's name.

6.3.1.8 Concern's address.

6.3.1.9 Type of service performed.

6.3.1.10 Type of extinguisher serviced.

6.3.1.11 Date service is performed.

6.3.2 The above information shall appear on one side of the service tag. All other desired printing or information shall be placed on the reverse side of the tag.

6.4 Legibility.

6.4.1 The certificate of registration number required in Section 6.3(5), and the signature required in Section 6.3(6), shall be printed or written distinctly.

6.4.2 All information pertaining to date, type of servicing, and type of extinguisher serviced shall be indicated on the card by perforations in the appropriate space provided. Each perforation shall clearly indicate the desired information.

6.5 Format.

Subject to the use requirements of Section 6.4, the following format shall be used for all service tags:

EXAMPLE OF SERVICE TAG

Exception: Service tags may be printed or otherwise established for any number of years not in excess of five (5) years.
ILLUSTRATION ON FILE IN STATE FIRE MARSHAL'S OFFICE

6.6 New Tag.

A new service tag shall be attached to the extinguisher each time a service is performed.

6.7 Tag Wording.

The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

6.8 Removal.

No person or persons shall remove a service tag, hydrostatic test tag or label, 6 year maintenance service tag or label, or verification of service collar, except when further service is performed. At that time the expired tag, label or collar shall be removed and a new tag, label or collar shall replace the expired one. No person or persons shall deface, modify, or alter any service tag, hydrostatic test tag or label, 6 year maintenance service tag or label, or verification of service collar that is required to be attached to any portable fire extinguisher.

6.9 Restrictive Use.

6.9.1 Portable fire extinguishers which do not conform with the minimum rules, shall be permanently removed from service, and shall not be tagged.

6.9.2 Any extinguisher which fails a hydrostatic test shall be condemned, and so stamped or etched into the cylinder or shell.

6.9.3 Extinguishers, other than one which has failed a hydrostatic test, may be provided with a tag stating the extinguisher is "Condemned" or "Rejected". Such tags shall be red in color, and shall be not less, in size, than that of an approved service tag.

6.9.4 Service tags shall only be placed on portable fire extinguishers and wheeled units as allowed in these rules.

R710-1-7. Portable Fire Extinguisher Rated Classification Labels.

7.1 Use of Label.

Any label bearing the rated classification and listing shall not be placed upon any extinguisher unless specifically authorized by the manufacturer. Any extinguisher, other than carbon dioxide, without this manufacturer's label shall not be serviced.

7.2 Labels Prohibited.

Company labels or advertisement stickers other than those required herein shall not be affixed to fire extinguishers.

R710-1-8. Amendments and Additions.

8.1 Restricted Service.

Any extinguisher requiring a hydrostatic test as required, shall not be serviced until such extinguisher has been subjected to, and passed the required hydrostatic test.

8.2 Service.

At the time of installation, and at each annual inspection, all servicing shall be done in accordance with the manufacturer's instructions, adopted statutes, and these rules. Extinguishers shall be placed in an operable condition, free from defects which may cause malfunctions. Nozzles and hoses shall be free of obstructions or substances which may cause an obstruction.

8.3 Seals or Tamper Indicator.

Seals or tamper indicators shall be constructed of approved plastic or non-ferrous wire which can be easily broken, and so

arranged that removal cannot be accomplished without breakage. Such seals or tamper indicators shall be used to retain the locking pin in a locked position. Seals or tamper indicators shall be removed annually to ensure that the pull pin is free.

8.4 New Extinguishers

A new extinguisher that has the date of manufacture printed on the label by the manufacturer, or date of manufacture stamped on the extinguisher by the manufacturer, does not require a service tag attached to the extinguisher until one year after the date of manufacture.

8.5 Class K Portable Fire Extinguishers

NFPA, Standard 10, Section 2-3.2 and Section 2-3.2.1, 1998 edition, is deleted and replaced with the following:

8.5.1 Class K labeled portable fire extinguishers shall be provided for the protection of commercial food heat-processing equipment using vegetable or animal oils and fat cooking media. A placard shall be provided and placed above the Class K portable fire extinguisher that states that if a fire protection system exists, it shall be activated prior to use of the Class K portable fire extinguisher.

8.5.2 Those existing sodium or potassium bicarbonate dry-chemical portable fire extinguishers, having a minimum rating of 40-B, and specifically placed for protection of commercial food heat-processing equipment, may remain in the kitchen to be used for other applications, except the protection of commercial food heat-processing equipment using vegetable or animal oils or fat cooking media.

R710-1-9. Adjudicative Proceedings.

9.1 All adjudicative proceedings performed by the agency shall proceed informally as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

9.2 The issuance, renewal, or continued validity of a license or certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant, person employed for, or the person having authority and management of a concern servicing portable fire extinguishers commits any of the following violations:

9.2.1 The person or applicant is not the real person in interest.

9.2.2 Material misrepresentation or false statement in the application.

9.2.3 Refusal to allow inspection by the SFM, or his duly authorized deputies.

9.2.4 The person or applicant for a license or certificate of registration does not have the proper facilities and equipment, to conduct the operations for which application is made.

9.2.5 The person or applicant for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application is made, as evidenced by failure to pass the examination and/or practical tests pursuant to Section 4.15 of these rules.

9.2.6 The person or applicant fails to place a verification of service collar when required on the valve assembly of any fire extinguisher when the following occurs:

9.2.6.1 re-charge;

9.2.6.2 required maintenance.

9.2.7 The person or applicant refuses to take the examination required by Section 4.3 and Section 3.14 of these rules.

9.2.8 The person or applicant has been convicted of any of the following:

9.2.8.1 a violation of the provisions of these rules;

9.2.8.2 a crime of violence or theft; or

9.2.8.3 any crime that bears upon the person or applicant's ability to perform their functions and duties.

9.2.9 The person servicing portable fire extinguishers does not maintain adequate facilities, equipment, or knowledge, to conduct operations as required in the manufacturer's instructions, statute, and rules.

9.2.10 The person or applicant is involved in conduct which could be considered criminal, although such conduct did not result in the filing of criminal charges against the person, but where the evidence shows that the criminal act did occur, that the person committed the act, and that the burden by a preponderance of evidence could be established.

9.3 A person whose license or certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the Board if requested by that person within 20 days after receiving notice.

9.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

9.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

9.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

9.7 Reconsideration of the Board decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

9.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose license or certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

9.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63-46b-15.

R710-1-10. Fees.

10.1 Fee Schedule.

10.1.1 Licenses and Certificates of Registration (new and renewals):

10.1.1.1 License (any type) \$~~200.00~~300.00

10.1.1.2 Branch office license [~~400.00~~]150.00

10.1.1.3 Certificate of registration 30.00

10.1.1.4 Duplicate 30.00

10.1.1.5 License Transfer 50.00

10.1.1.6 Application for exemption 100.00

10.1.2 Examinations:

10.1.2.1 Initial examination. 20.00

10.1.2.2 Re-examination 15.00

10.1.2.3 Five year examination. 20.00

10.2 Payment of Fees.

The required fee shall accompany the application for license or certificate of registration. License or certificate of registration fees will be refunded if the application is denied.

10.3 Late Renewal Fees.

10.3.1 Any license or certificate of registration not renewed before January 1st will be subject to an additional fee equal to 10% of the required inspection fee.

10.3.2 When a certificate of registration has expired for more than one year, an application shall be made for an original certificate as if the application was being made for the first time. Examinations will be re-taken with initial examination fees.

KEY: fire prevention, extinguishers
~~May 16, 2002~~ August 15, 2002
 Notice of Continuation June 10, 2002
 53-7-204



Public Safety, Fire Marshal **R710-4**

Buildings Under the Jurisdiction of the State Fire Prevention Board

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25049

FILED: 06/27/2002, 15:43

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Fire Prevention Board met and proposed that Rule R710-4 be amended. The Board directed that the existing rule be amended to remove certain prohibitions on presignal fire alarm systems and to amend the International Fire Code with regard to Residential Group R-4 occupancies.

SUMMARY OF THE RULE OR CHANGE: The Fire Prevention Board met in a regularly scheduled Board meeting on May 14, 2002, and proposed that the following be completed by amending the existing rule as follows: 1) in Subsection R710-4-3(3.3.1.1), the Board proposes to strike the prohibition on the usage of presignal type fire alarm systems in certain institutional occupancies and allow presignal systems under certain conditions as allowed in National Fire Protection Association (NFPA), Standard 101, Life Safety Code; and 2) in Subsection R710-4-3(3.11.2), the Board proposes to add the exception that in Residential Group R-4 occupancies that are not over 4,500 gross square feet, do not house more than 16 residents, and have an approved fire alarm system that is interconnected, will not be required to place an automatic fire sprinkler system in that occupancy.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There would be an anticipated cost of \$400 to reprint the newly adopted rule and distribute it to all those affected by the rule change.

❖ **LOCAL GOVERNMENTS:** There would be no anticipated cost or savings to local government to instigate the proposed rule change because the proposed rule change does not effect local government.

❖ **OTHER PERSONS:** There would be a savings seen to those institutional occupancies who would be allowed to use presignal systems under certain conditions rather than the other accepted fire alarm systems. There would be an anticipated savings to those that would have a Residential Group R-4 occupancy that would be allowed to install an approved and interconnected fire alarm system rather than the very intrusive requirement to install a fire sprinkler system in existing facilities. The savings would be approximately \$2.50 per square foot times the size of the occupancy that would need to be fire sprinklered. Aggregate anticipated savings is impossible to accurately state due to the unknown amount of Residential Group R-4 facilities to be built or remodeled, and the size of each facility figured on a square foot basis.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons only possible savings as described in "Other Persons" above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There would be no fiscal impact on businesses from the enactment of this proposed rule change. There would be a savings seen from the enactment of this rule rather than a cost to businesses.

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

PUBLIC SAFETY
 FIRE MARSHAL
 Room 302
 5272 S COLLEGE DR
 MURRAY UT 84123-2611, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/14/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: Gary A. Wise, State Fire Marshal

R710. Public Safety, Fire Marshal.**R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board.****R710-4-1. Adoption of Fire Codes.**

Pursuant to Title 53, Chapter 7, Section 204, of the Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules for the prevention of fire and for the protection of life and property against fire and panic in any publicly owned building, including all public and private schools, colleges, and university buildings, and in any building or structure used or intended for use, as an asylum, hospital, mental hospital, sanitarium, home for the aged, assisted living facility, children's home or day care center, or any similar institutional type occupancy of any capacity; and in any place of assemblage where fifty (50) or more persons may gather together in a building, structure, tent, or room, for the purpose of amusement, entertainment, instruction, or education.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 101, Life Safety Code (LSC), 2000 edition, except as amended by provisions listed in R710-4-3, et seq. The following chapters from NFPA, Standard 101 are the only chapters adopted: Chapter 18 - New Health Care Occupancies; Chapter 19 - Existing Health Care Occupancies; Chapter 20 - New Ambulatory Health Care Occupancies; Chapter 21 - Existing Ambulatory Health Care Occupancies; Chapter 22 - New Detention and Correctional Occupancies; Chapter 23 - Existing Detention and Correctional Occupancies; and other sections referenced within and pertaining to these chapters only.

1.2 National Fire Protection Association (NFPA), Standard 13, Installation of Sprinkler Systems, 1999 edition, except as amended by provisions listed in R710-4-3, et seq.

1.3 National Fire Protection Association (NFPA), Standard 72, National Fire Alarm Code, 1996 edition, except as amended by provisions listed in R710-4-3, et seq.

1.4 National Fire Protection Association (NFPA), Standard 70, National Electric Code (NEC), 1999 edition, as adopted by the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953. Wherever there are sections or tables in the International Fire Code (IFC) that reference "ICC Electrical Standard", the reference to "ICC Electrical Standard" shall be replaced with "National Electric Code".

1.5 International Building Code (IBC), 2000 edition, as published by the International Code Council, Inc. (ICC), and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.6 International Fire Code (IFC), 2000 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-4-3, et seq.

1.7 International Mechanical Code (IMC), 2000 edition, as published by the International Code Council, Inc., and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.8 International Fuel Gas Code (IFGC), 2000 edition, as published by the International Code Council, and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.9 International Plumbing Code (IPC), 2000 edition, as published by the International Code Council, Inc., and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.10 Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal.

R710-4-2. Definitions.

2.1 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

2.2 "AWWA" means American Water Works Association.

2.3 "Board" means Utah Fire Prevention Board.

2.4 "Bureau of Fire Prevention or Fire Prevention Bureau" means the AHJ.

2.5 "Fire Chief or Chief of the Department" means the AHJ.

2.6 "Fire Department" means the AHJ.

2.7 "Fire Marshal" means the AHJ.

2.8 "Fire Officer" means the State Fire Marshal, the state fire marshal's deputies, the fire chief or fire marshal of any county, city, or town fire department, the fire officer of any fire district or special service district organized for fire protection purposes is the AHJ.

2.9 "IBC" means International Building Code.

2.10 "ICC" means International Code Council, Inc.

2.11 "IFC" means International Fire Code.

2.12 "IFGC" means International Fuel Gas Code.

2.13 "IMC" means International Mechanical Code.

2.14 "IPC" means International Plumbing Code.

2.15 "LSC" means Life Safety Code.

2.16 "NEC" means National Electric Code.

2.17 "NFPA" means National Fire Protection Association.

2.18 "SFM" means State Fire Marshal.

2.19 "UCA" means Utah State Code Annotated 1953 as amended.

R710-4-3. Amendments and Additions.

3.1 Door Closures

3.1.1 IFC, Chapter 7, Section 703.2. Add the following Exception. In Group E Occupancies, where the corridor serves an occupant load [is] greater than 30 and the building does not have an automatic fire sprinkler system installed, the door closures may be of the friction hold-open type on classrooms doors only.

3.2 Dumpsters

3.2.1 IFC, Chapter 3, Section 304.3.3, with reference to Group E Occupancies, is amended to add the following requirement:

Dumpsters and containers with an individual capacity of 1.5 cubic yards (40.5 cubic feet)(1.15m) or more shall not be stored in buildings or placed within 20 feet of combustible walls, openings or combustible roof eave lines.

3.3 Fire Alarm Systems

3.3.1 General Provisions[

~~3.3.1.1 Presignal feature type systems are prohibited, except in I-3 Occupancies.]~~

3.3.1.[2] Fire alarm system designs submitted to the AHJ, shall include complete floor plans showing location of all devices, occupancy use of each room, schematic wiring diagrams, battery calculations, and any other items deemed necessary.

3.3.2 Required Installations

3.3.2.1 Fire alarm systems shall be provided as required in IFC, Chapter 9, Section 907, and LSC Chapters as adopted, and in other rules promulgated by the Board.

3.3.2.2 All state-owned buildings, college and university buildings, other than institutional, with an occupant load of 100 or more, all schools with an occupant load of 50 or more, shall have an approved fire alarm system with the following features:

3.3.2.2.1 Products-of-combustion (smoke) detectors installed throughout all corridors and common areas of egress at the maximum prescribed spacing of thirty feet on center, and no more than fifteen feet from the walls.

3.3.2.2.2 In other than fully sprinklered buildings, automatic detectors shall be installed in each enclosed space, other than corridors, at maximum prescribed spacing as specified in NFPA, Standard 72, or by their listing.

3.3.2.2.3 Manual fire alarm boxes shall be provided as required. In public and private elementary and secondary schools, manual fire alarm boxes shall be provided in the boiler room, kitchen, and main administrative office of each building, and any other areas as determined by the AHJ.

3.3.2.2.4 The fire alarm system shall be connected to a proprietary panel, where provided within the complex.

3.3.3 Main Panel

3.3.3.1 An approved key plan drawing and operating instructions shall be posted at the main fire alarm panel which displays the location of all alarm zones and if applicable, device addresses.

3.3.3.2 The main panel shall be located in a normally attended area such as the main office or lobby. Location of the Main Panel other than as stated above, shall require the review and authorization of the SFM. Where location as required above is not possible, an electronically supervised remote annunciator from the main panel shall be located in a supervised area of the building. The remote annunciator shall visually indicate system power status, alarms for each zone, and give both a visual and audible indication of trouble conditions in the system. All indicators on both the main panel and remote annunciator shall be adequately labeled.

3.3.4 System Wiring

3.3.4.1 System Wiring shall be in accordance with the following:

3.3.4.1.1 The Initiating Device circuits (IDC) shall be Style D as defined in NFPA, Standard 72.

3.3.4.1.2 The Indicating Appliance circuits (IAC) shall be Style Z as defined in NFPA, Standard 72.

3.3.4.1.3 Signaling line circuits shall be Style 6 or 7 as defined in NFPA, Standard 72.

3.3.4.2 All junction boxes shall be adequately identified as part of the fire alarm system. Covers for the concealed boxes shall be painted red.

3.3.5 System Devices

All equipment and devices shall be listed and/or labeled by a nationally recognized testing laboratory for fire alarm use.

3.3.6 Fan Shut Down

3.3.6.1 The fan shut down relay(s) in the air handling equipment shall be normally energized, and connected through and controlled by a normally closed contact in the fire alarm panel, or a normally closed contact of a remote relay under supervision by the main panel. The relays will transfer on alarm, and shall not restore until the panel is reset.

3.3.6.2 Duct detectors required by the IMC, shall be interconnected, and compatible with the fire alarm system.

3.3.7 Maintenance and Tests

The owner/administrator of each building shall insure maintenance and testing as required in IFC, Chapter 9, Section 901.5 and 901.6. A written log, verifying these tests, shall be kept on file for inspection by the AHJ.

3.4 Fireworks

3.4.1 IFC, Chapter 33, Section 3301.1.3 is amended to include the additional Exception:

5. The use of fireworks for display and retail sales is allowed as set forth in UCA 53-7-220 and UCA 11-3-1.

3.5 Health Care Facilities

3.5.1 LSC Chapters 18, 19, 20 and 21, Sections 18.1.2.4, 19.1.2.4, 20.1.2.2 and 21.1.2.2 (Exiting Through Adjoining Occupancies) exception is deleted.

3.5.2 LSC Chapter 19, Section 19.3.6.1, (Rooms Allowed open to Corridor) exceptions No. 1, No. 5, No. 6, and No. 8 are deleted.

3.6 Fire Department Connections

3.6.1 The fire department connection on automatic fire sprinkler and standpipe systems shall be located a reasonable distance as approved by the AHJ.

3.7 Fire Sprinklers and Standpipes

3.7.1 The potable water supply to automatic fire sprinkler and standpipe systems shall be protected against backflow as required in Utah Administrative Code, R156-56-707(41).

3.7.2 Antifreeze systems shall be protected against backflow as required in Utah Administrative Code, R156-56-707(42).

3.8 Water Supply Analysis

3.8.1 For proposed construction in both sprinklered and unsprinklered occupancies, the owner or architect shall provide an engineer's water supply analysis evaluating the available water supply.

3.8.2 The owner or architect shall provide the water supply analysis during the preliminary design phase of the proposed construction.

3.8.3 The water analysis shall be representative of the supply that may be available at the time of a fire as required in NFPA, Standard 13, Appendix A-9-2.1.

3.9 Fire Drills

3.9.1 IFC, Chapter 4, Section 405.2 is amended to include the following to Group E as specified in Table 405.2:

A fire drill in secondary schools shall be conducted at least every two months, to a total of four fire drills during the nine month school year. The first fire drill shall be conducted within the first two weeks of the school year.

3.10 Institutional

3.10.1 IFC, Chapter 2, Section 202, Educational Group E, Day care is amended as follows: On line three delete the word "five" and replace it with the word "four".

3.10.2 IFC, Chapter 2, Section 202, Institutional Group I-1 is amended to add the following:

On line nine add "type 1" in front of the words "assisted living facilities".

3.10.3 IFC, Chapter 2, Section 202, Institutional Group I-2 is amended as follows: On line three delete the word "five" and replace it with the word "three". On line eight after the words "detoxification facilities" delete the rest of the paragraph, and add the following: "ambulatory surgical centers with two or more operating rooms where care is less than 24 hours and type 2 assisted living facilities. Type 2 assisted living facilities with five or fewer persons shall be classified as a Group R-4. Type 2 assisted living

facilities with at least six and not more than 16 residents shall be classified as a Group I-1 facility.

3.10.4 IFC, Chapter 2, Section 202, Institutional Group I-2, Child care facility is amended as follows: On line two delete the word "five" and replace it with the word "four".

3.10.5 IFC, Chapter 2, Section 202, Institutional Group I-4 day care facilities, Child care facility is amended as follows: On line three delete the word "five" and replace it with the word "four". Also on line two of the Exception delete the word "five" and replace it with the word "four".

3.11 Automatic Sprinkler Systems

3.11.1 IFC, Chapter 9, Section 903.2.5 is deleted and rewritten as follows: An automatic fire sprinkler system shall be provided throughout buildings with Group I fire areas. Listed quick response or residential sprinkler heads shall be installed in patient [F]or resident sleeping areas.

~~[— 3.11.2 IFC, Chapter 9, Section 903.2.9 is deleted and rewritten as follows: An automatic fire sprinkler system shall be provided throughout buildings with Group R-4 fire areas that contain more than eight occupants. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.]~~

3.11.2 IFC, Chapter 9, Section 903.2.9 is amended to add the following: Exception: Buildings not more than 4500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system.

3.12 Retroactive Installation of Automatic Fire Alarm Systems

3.12.1 IFC, Chapter 9, Sections 907.3.1.1, 907.3.1.2, 907.3.1.3, 907.3.1.4 and 907.3.1.9 is deleted.

R710-4-4. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-4-5. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared, for any reason, to be invalid, it is the intent of the Board that it would have passed all other portions of this Board action, independent of the elimination here from of any such portion as may be declared invalid.

R710-4-6. Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ, or his authorized representative.

R710-4-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

KEY: fire prevention, public buildings

~~[January 2, 2002]~~ **August 15, 2002**

Notice of Continuation June 12, 2002

53-7-204

Public Safety, Fire Marshal **R710-6** Liquefied Petroleum Gas Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25065

FILED: 07/01/2002, 16:55

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Liquefied Petroleum (LP) Gas Board met and proposed that Rule R710-6 be amended. The Board directed that the existing rule be amended to add a new definition, increase fees for licenses, and add a new license fee.

SUMMARY OF THE RULE OR CHANGE: The Liquefied Petroleum Gas Board met in a regularly scheduled Board meeting on June 7, 2002, and proposed that the following be completed by amending the rule as follows: 1) in Subsection R710-6-2(2.3), the Board proposes to define the the term "Dispensing System" which will establish by definition when a plan review fee is required for the setting of dispensing systems less than 5,000 water gallons; 2) in Subsection R710-6-6(6.1), the Board proposes to increase the license fees by 50% as approved by the Utah State Legislature; 3) in Subsection R710-6-6(6.1.6), the Board proposes to add a new fee for inspection of LP Gas Private Containers as approved by the Utah State Legislature.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-305

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There would be an anticipated cost of \$400 to reprint the newly adopted rule and distribute it to all those affected by the rule change.

❖ **LOCAL GOVERNMENTS:** There would be no anticipated cost or savings to local government to instigate the proposed rule

change because the proposed rule change does not effect local government.

❖ OTHER PERSONS: There would be a cost seen to those distributors, dispenserers, plumbers, and heating, ventilating, and air conditioning (HVAC) contractors that license to work with LP Gas systems. The cost of the license would increase from \$35 to \$150 per year depending on the license requested. There would also be a cost of \$150 to privately owned LP Gas containers over 5,000 gallons. The aggregate anticipated cost of both of these proposed increases would total approximately \$72,000.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for LP Gas distributors would be \$150 per license. The compliance cost for dispensers would be \$50 per license. The compliance cost for plumbers and HVAC contractors would be \$35 per license. For privately owned LP Gas containers over 5,000 water gallons the inspection cost would be \$150.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be a fiscal impact assesed to those companies that license to sell, transport, dispense, service, or repair LP Gas in the State of Utah. This is the first increase in license fees seen in the Utah LP Gas Safety Act since its creation in 1987. There will also be a fiscal impact on privately owned LP Gas containers over 5,000 water gallons. The Department of Public Safety recommended this needed increase which was approved by the Utah State Legislature in S.B. 1 the last legislative session. (DAR NOTE: S.B. 1 can be found at UT L 2002 Ch 277, and was effective 07/01/2002.)

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

PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/14/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: Gary A. Wise, State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-6. Liquefied Petroleum Gas Rules.

R710-6-1. Adoption, Title, Purpose and Scope.

Pursuant to Title 53, Chapter 7, Section 305, Utah State Code Annotated 1953, the Liquefied Petroleum Gas (LPG) Board adopts

minimum rules to provide regulation to those who distribute, transfer, dispense or install LP Gas and/or its appliances in the State of Utah.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 58, LP Gas Code, 2001 edition, except as amended by provisions listed in R710-6-8, et seq.

1.2 National Fire Protection Association (NFPA), Standard 54, National Fuel Gas Code, 1999 edition, except as amended by provisions listed in R710-6-8, et seq.

1.3 National Fire Protection Association (NFPA), Standard 1192, Standard on Recreational Vehicles, 1999 Edition, except as amended by provisions listed in R710-6-8, et seq.

1.4 International Fire Code (IFC), Chapter 38, 2000 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-6-8, et seq.

1.5 A copy of the above codes are on file with the Division of Administrative Rules, and the State Fire Marshal's Office. The definitions contained in the afore referenced codes shall also pertain to these rules.

1.6 Title.

These rules shall be known as "Rules Governing LPG Operations in the State of Utah" and may be cited as such, and will be hereinafter referred to as "these rules".

1.7 Validity.

If any article, section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the LPG Board such decision shall not affect the validity of the remaining portion of these rules.

1.8 Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes or standards as adopted, the more restrictive requirement shall govern, as determined by the enforcing authority.

R710-6-2. Definitions.

2.1 "Board" means the Liquefied Petroleum Gas Board.

2.2 "Concern" means a person, firm, corporation, partnership, or association, licensed by the Board.

2.3 "Dispensing System" means equipment in which LP Gas is transferred from one container to another in liquid form.

~~2.3~~2.4 "Division" means the Division of the State Fire Marshal.

~~2.4~~2.5 "Enforcing Authority" means the division, the municipal or county fire department, other fire prevention agency acting within its respective fire prevention jurisdiction, or the building official of any city or county.

~~2.5~~2.6 "ICC" means International Code Council, Inc.

~~2.6~~2.7 "IFC" means International Fire Code.

~~2.7~~2.8 "License" means a written document issued by the Division authorizing a concern to be engaged in an LPG business.

~~2.8~~2.9 "LPG" means Liquefied Petroleum Gas.

~~2.9~~2.10 "LPG Certificate" means a written document issued by the Division to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

~~2.10~~2.11 "NFPA" means the National Fire Protection Association.

~~2.11~~2.12 "Possessory Rights" means the right to possess LPG, but excludes broker trading or selling.

~~2.12~~2.13 "Public Place" means a highway, street, alley or other parcel of land, essentially unobstructed, which is deeded, dedicated or otherwise appropriated to the public for public use, and where the public exists, travels, traverses or is likely to frequent.

~~2.13~~2.14 "Qualified Instructor" means a person holding a valid LPG certificate in the area in which he is instructing.

~~2.14~~2.15 "UCA" means Utah State Code Annotated 1953 as amended.

R710-6-3. Licensing.

3.1 Type of license.

3.1.1 Class I: A licensed dealer who is engaged in the business of installing gas appliances or systems for the use of LPG and who sells, fills, refills, delivers, or is permitted to deliver any LPG.

3.1.2 Class II: A business engaged in the sale, transportation, and exchange of cylinders, but not transporting or transferring gas in liquid.

3.1.3 Class III: A business not engaged in the sale of LPG, but engaged in the sale and installation of gas appliances, or LPG systems.

3.1.4 Class IV: Those businesses listed below:

3.1.4.1 Dispensers

3.1.4.2 Sale of containers greater than 96 pounds water capacity.

3.1.4.3 Other LPG businesses not listed above.

3.2 Signature on Application.

The application shall be signed by an authorized representative of the applicant. If the application is made by a partnership, it shall be signed by at least one partner. If the application is made by a corporation or association other than a partnership, it shall be signed by the principal officers, or authorized agents.

3.3 Issuance.

Following receipt of the properly completed application, an inspection, completion of all inspection requirements, and compliance with the provision of the statute and these rules, the Division shall issue a license.

3.4 Original, Valid Date.

Original licenses shall be valid for one year from the date of application. Thereafter, each license shall be renewed annually and renewals thereof shall be valid for one year from issuance.

3.5 Renewal.

Application for renewal shall be made on forms provided by the SFM.

3.6 Refusal to Renew.

The Board may refuse to renew any license in the same manner, and for any reason, that they are authorized, pursuant to Article 5 of these rules to deny a license. The applicant shall, upon such refusal, have the same rights as are granted by Article 5 of this article to an applicant for a license which has been denied by the Board.

3.7 Change of Address.

Every licensee shall notify the Division, in writing, within thirty (30) days of any change of his address.

3.8 Under Another Name.

No licensee shall conduct his licensed business under a name other than the name or names which appears on his license.

3.9 List of Licensed Concerns.

3.9.1 The Division shall make available, upon request and without cost, to the Enforcing Authority, the name, address, and license number of each concern that is licensed pursuant to these rules.

3.9.2 Upon request, single copies of such list shall be furnished, without cost, to a licensed concern.

3.10 Inspection.

The holder of any license shall submit such license for inspection upon request of the Division or the Enforcing Authority.

3.11 Notification and LPG Certificate.

Every licensed concern shall, within twenty (20) days of employment, and within twenty (20) days of termination of any employee, report to the Division, the name, address, and LPG certificate number, if any, of every person performing any act requiring an LPG certificate for such licensed concern.

3.12 Posting.

Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the premises of the licensed location.

3.13 Duplicate License.

A duplicate license may be issued by the Division to replace any previously issued license, which has been lost or destroyed, upon the submission of a written statement from the licensee to the Division. Such statement shall attest to the fact that the license has been lost or destroyed. If the original license is found it shall be surrendered to Division within 15 days.

3.14 Registration Number.

Every license shall be identified by a number, delineated as P-(number).

3.15 Accidents, Reporting.

Any accident where a licensee and LPG are involved must be reported to the Board in writing by the affected licensee within 3 days upon receipt of information of the accident. The report must contain any pertinent information such as the location, names of persons involved, cause, contributing factors, and the type of accident. If death or serious injury of person(s), or property damage of \$5000.00 or more results from the accident, the report must be made immediately by telephone and followed by a written report.

3.16 Board investigation of accidents.

At their discretion, the Board will investigate, or direct the Division to investigate, all serious accidents as defined in Subsection 3.15.

R710-6-4. LP Gas Certificates.

4.1 Application.

Application for an LPG certificate shall be made in writing to the Division. The application shall be signed by the applicant.

4.2 Examination.

Every person who performs any act or acts within the scope of a license issued under these rules, shall pass an initial examination in accordance with the provisions of this article.

4.3 Types of Initial Examinations:

4.3.1 Carburetion

4.3.2 Dispenser

4.3.3 HVAC/Plumber

4.3.4 Recreational Vehicle Service

4.3.5 Serviceman

4.3.6 Transportation and Delivery

4.4 Initial Examinations.

4.4.1 The initial examination shall include an open book written test of the applicant's knowledge of the work to be performed by the applicant. The written examination questions shall be taken from the adopted statute, administrative rules, NFPA 54, and NFPA 58.

4.4.2 The initial examination shall also include a practical or actual demonstration of some selected aspects of the job to be performed by the applicant.

4.4.3 To successfully complete the written and practical initial examinations, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken. Each portion of the examination will be graded separately. Failure of any one portion of the examination will not delete the entire test.

4.4.4 Examinations may be given at various field locations as deemed necessary by the Division. Appointments for field examinations are required.

4.4.5 As required in Sections 4.2 and 4.3, those applicants that have successfully completed the requirements of the Certified Employee Training Program (CETP), as written by the National Propane Gas Association, and that corresponds to the work to be performed by the applicant, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.5 Original and Renewal Date.

Original LPG certificates shall be valid for one year from the date of issuance. Thereafter, each LPG certificate shall be renewed annually and renewals thereof shall be valid from for one year from issuance.

4.6 Renewal Date.

Application for renewal shall be made on forms provided by the Division.

4.7 Re-examination.

Every holder of a valid LPG Certificate shall take a re-examination every five years from the date of original certificate issuance, to comply with the provisions of Section 4.3 of these rules as follows:

4.7.1 The re-examination to comply with the provisions of Section 4.3 of these rules shall consist of one 25 question open book examination, to be mailed to the certificate holder at least 60 days before the renewal date.

4.7.2 The 25 question re-examination will consist of questions that focus on changes in the last five years to NFPA 54, NFPA 58, the statute, or the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or Division.

4.7.3 The certificate holder is responsible to complete the 25 question re-examination and return it to the Division in sufficient time to renew.

4.7.4 The certificate holder is responsible to return to the Division with the re-examination the correct renewal fees to complete that certificate renewal.

4.8 Refusal to Renew.

The Division may refuse to renew any LPG certificate in the same manner and for any reason that is authorized pursuant to Article 5.

4.9 Inspection.

The holder of a LPG certificate shall submit such certificate for inspection, upon request of the Division or the enforcing authority.

4.10 Type.

4.10.1 Every LPG certificate shall indicate the type of act or acts to be performed and for which the applicant has qualified.

4.10.2 Any person holding a valid LPG certificate shall not be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

4.10.3 It is the responsibility of the LPG certificate holder to insure that the concern they are employed by is licensed under this act.

4.11 Change of Address.

Any change in home address of any holder of a valid LPG certificate shall be reported by the registered person to the Division within thirty (30) days of such change.

4.12 Duplicate.

A duplicate LPG certificate may be issued by the Division to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the Division from the certified person. Such statement shall attest to the certificate having been lost or destroyed. If the original is found, it shall be surrendered to the Division within 15 days.

4.13 Contents of Certificate of Registration.

Every LPG certificate issued shall contain the following information:

4.13.1 The name and address of the applicant.

4.13.2 The physical description of applicant.

4.13.3 The signature of the LP Gas Board Chairman.

4.13.4 The date of issuance.

4.13.5 The expiration date.

4.13.6 Type of service the person is qualified to perform.

4.13.7 Have printed on the card the following: "This certificate is for identification only, and shall not be used for recommendation or advertising".

4.14 Minimum Age.

No LPG certificate shall be issued to any person who is under sixteen (16) years of age.

4.15 Restrictive Use.

4.15.1 No LPG certificate shall constitute authorization for any person to enforce any provisions of these rules.

4.15.2 A LPG certificate may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

4.15.3 Regardless of the acts for which the applicant has qualified, the performance of only those acts authorized under the licensed concern employing such applicant shall be permissible.

4.15.4 Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a LPG certificate has qualified shall be permissible by such applicant.

4.16 Right to Contest.

4.16.1 Every person who takes an examination for a LPG certificate shall have the right to contest the validity of individual questions of such examination.

4.16.2 Every contention as to the validity of individual questions of an examination that cannot be reasonably resolved, shall be made in writing to the Division within 48 hours after taking said examination. Contentions shall state the reason for the objection.

4.16.3 The decision as to the action to be taken on the submitted contention shall be by the Board, and such decision shall be final.

4.16.4 The decision made by the Board, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

4.17 Non-Transferable.

LPG Certificates shall not be transferable to another individual. Individual LPG certificates shall be carried by the person to whom issued.

4.18 New Employees.

New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid LPG certificate for a period not to exceed forty five (45) days from the initial date of employment. By the end of such period, new employees shall have taken and passed the required examination. In the event the employee fails the examination, re-examination shall be taken within 30 days. The employee shall remain under the direct supervision of an employee holding a valid LPG certificate, until certified.

4.19 Certificate Identification.

Every LPG certificate shall be identified by a number, delineated as PE-(number). Such number shall not be transferred from one person to another.

R710-6-5. Adjudicative Proceedings.

5.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

5.2 The issuance, renewal, or continued validity of a license or LPG certificate may be denied, suspended or revoked by the Division, if the Division finds that the applicant, person employed for, or the person having authority and management of a concern commits any of the following violations:

5.2.1 The person or applicant is not the real person in interest.

~~(4b)~~5.2.2 Material misrepresentation or false statement in the application, whether original or renewal.

5.2.2.3 Refusal to allow inspection by the Division or enforcing authority on an annual basis to determine compliance with the provisions of these rules.

5.2.3.4 The person, applicant, or concern for a license does not have the proper or necessary facilities, including qualified personnel, to conduct the operations for which application is made.

5.2.4.5 The person or applicant for a LPG certificate does not possess the qualifications of skill or competence to conduct the operations for which application is made. This can also be evidenced by failure to pass the examination and/or practical tests.

5.2.5.6 The person or applicant refuses to take the examination.

5.2.6.7 The person or applicant has been convicted of any of the following:

5.2.6.7.1 a violation of the provisions of these rules;

5.2.6.7.2 a crime of violence or theft; or

5.2.6.7.3 a crime that bears upon the person or applicant's ability to perform their functions and duties.

5.2.7.8 The person or applicant does not complete the re-examination process by the person or applicants certificate or license expiration date.

5.3 A person whose license or certificate of registration is suspended or revoked by the Division shall have an opportunity for a hearing before the LPG Board if requested by that person within 20 days after receiving notice.

5.4 All adjudicative proceedings, other than criminal prosecution, taken by the Enforcing Authority to enforce the Liquefied Petroleum Gas Section, Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

5.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

5.6 The Board shall direct the Division to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

5.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

5.8 After a period of three (3) years from the date of revocation, the Board may review the written application of a person whose license or certificate of registration has been revoked.

5.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

R710-6-6. Fees.

6.1 Fee Schedule.

[
~~TABLE~~
]

6.1.1 License and LPG Certificates (new and renewals):

6.1.1.1 License

6.1.1.1.1 Class I - ~~300.00~~450.00

6.1.1.1.2 Class II - ~~300.00~~450.00

6.1.1.1.3 Class III - ~~70.00~~105.00

6.1.1.1.4 Class IV - ~~100.00~~150.00

6.1.1.2 Branch office license - ~~225.00~~337.50

6.1.1.3 LPG Certificate - \$30.00

6.1.1.4 LPG Certificate (Dispenser--Class B) - \$10.00

6.1.1.5 Duplicate - \$30.00

6.1.2 Examinations:

6.1.2.1 Initial examination - \$20.00

6.1.2.2 Re-examination - \$20.00

6.1.2.3 Five year examination - \$20.00

6.1.3 Plan Reviews:

6.1.3.1 More than 5000 water gallons of LPG - \$90.00

6.1.3.2 5,000 water gallons or less of LPG - \$45.00

6.1.4 Special Inspections.

6.1.4.1 Per hour of inspection - \$30.00

(charged in half hour increments with part half hours charged as full half hours).

6.1.5 Re-inspection (3rd Inspection or more) - \$250.00

6.1.6 LP Gas Private Container Inspection - \$150.00

] 6.2 Payment of Fees.

The required fee shall accompany the application for license or LPG certificate or submission of plans for review.

6.3 Late Renewal Fees.

6.3.1 Any license or LPG certificate not renewed on or before one year from the original date of issuance will be subject to an additional fee equal to 10% of the required fee.

6.3.2 When an LPG certificate has expired for more than one year, an application shall be made for an original certificate as if the application was being taken for the first time. Examinations will be retaken with initial examination fees.

R710-6-7. Board Procedures.

7.1 The Board will review the Division and Enforcing Authorities activities since the last meeting, and review and act on license and permit applications, review financial transactions, consider recommendations of the Division, and all other matters brought to the Board.

7.2 The Board may be asked to serve as a review board for items under disagreement.

7.3 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman.

7.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the Division, not less than twenty-one (21) days before the regularly scheduled Board meeting.

7.5 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.

7.6 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

7.7 The Division shall provide the Board with a secretary, who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least twenty-one (21) days prior to the scheduled Board meeting.

7.8 The Board may be called upon to interpret codes adopted by the Board.

7.9 The Board Chairman may assign member(s) various assignments as required to aid in the promotion of safety, health and welfare in the use of LPG.

R710-6-8. Amendments and Additions.

The following amendments and additions are hereby adopted by the Board:

8.1 All LP Gas facilities that are located in a public place shall be inspected by a certified LP Gas serviceman every five (5) years for leaks in all buried piping as follows:

8.1.1 All buried piping shall be pressure tested and inspected for leaks as set forth in NFPA Standard 54, Sections 4.1.1 through 4.3.4.

8.1.2 If a leak is detected and repaired, the buried piping shall again be pressure tested for leaks.

8.1.3 The certified LP Gas serviceman shall keep a written record of the inspection and all corrections made to the buried piping located in a public place.

8.1.4 The inspection records shall be available to be inspected on a regular basis by the Division.

8.2 Whenever the Division is required to complete more than two inspections to receive compliance on an LP Gas System, container, apparatus, appliance, appurtenance, tank or tank trailer, or any pertinent equipment for the storage, transportation or dispensation of LP Gas, the Division shall charge to the owner for each additional inspection, the re-inspection fee as stated in R710-6-6.1(e).

8.3 All LP Gas containers of more than 5000 water gallons shall be inspected at least biannually for compliance with the adopted statute and rules. The following containers are exempt from this requirement:

8.3.1 Those excluded from the act in UCA, Section 53-7-303.

8.3.2 Containers under federal control.

8.3.3 Containers under the control of the U.S. Department of Transportation and used for transportation of LP Gas.

8.3.4 Containers located at private residences.

8.4 Those using self-serve key or card services shall be trained in safe filling practices by the licensed dealer providing the services. A letter shall be sent to the Division by the licensed dealer stating that those using the self-serve key or card service have been trained.

8.5 IFC Amendments:

8.5.1 IFC, Section 3801.2 Permits. On line 2 after the word "105.7" add "and the adopted LPG rules".

8.5.2 IFC, Section 3803.1 - General. After the word "Code" on line 2 insert ",NFPA 54.

8.5.3 IFC, Section 3809.12 is deleted and replaced with NFPA, Standard 58, Section 5-4.1.

8.6 NFPA, Standard 58 Amendments:

8.6.1 NFPA, Standard 58, Section 2-2.1.3 is amended to add the following section: (c) All new, used or existing containers of 5000 water gallons or less, installed in the State of Utah or relocated within the State of Utah shall meet the requirements listed in ASME, Boiler and Pressure Vessel Code, "Rules for the Construction of Unfired Pressure Vessels". All new, used or existing containers of more than 5000 water gallons, installed in the State of Utah or relocated within the State of Utah shall meet the requirements listed in ASME, Boiler and Pressure Vessel Code, "Rules for the Construction of Unfired Pressure Vessels", Section VIII, and shall either be registered by the National Board of Boiler and Pressure Vessel Inspectors or the Manufacturer's Data Report for Pressure Vessels, Form U-1A, be provided.

8.6.2 NFPA, Standard 58, Section 2-2.1.3 is amended to add the following section: (d) If an existing container is relocated within the State of Utah, and depending upon the container size, does not bear the required ASME construction code and/or National Board Stamping, the new owner may submit to the Division a request for "Special Classification Permit". Material specifications and calculations of the container shall be submitted to the Division by the new owner. Also, the new owner shall insure that a review of the proposed container be completed by a registered professional engineer experienced in pressure vessel container design and construction, and the new owner submit that report to the Division. The Division will approve or disapprove the proposed container. Approval by the Division shall be obtained before the container is set or filled with LP Gas.

8.6.3 NFPA, Standard 58, Section 2-2.1.9 is deleted and rewritten as follows: Repair or alteration of containers shall comply with the latest edition of the National Board Inspection Code or the API Pressure Vessel Inspection Code as applicable. Repairs and alterations shall only be made by those holding a National Board "R" Certificate of Authorization commonly known as an R Stamp.

8.6.4 NFPA, Standard 58, Section 2-2.5.1 is amended to add the following: Skid mounted ASME horizontal containers greater than 2000 water gallons, with non-fireproofed steel mounted attached supports, resting on concrete, pavement, gravel or firm packed earth, may be mounted on the attached supports to a maximum of 12 inches from the top of the skid to the bottom of the container.

8.6.5 NFPA Standard 58, Sections 2-4.3(3)(a) and (b) are deleted and amended to read as follows:

Type K copper tubing without joints below grade may be used in exterior LP Gas piping systems only.

8.6.6 NFPA, Standard 58, Section 5.4.1.1 is deleted and rewritten as follows: At least 10 feet from the doorway or opening frequented by the public.

R710-6-9. Penalties.

9.1 Civil penalties for violation of any rule or referenced code shall be as follows:

[TABLE]

9.1.1 Concern failure to license - \$210.00 to \$900.00

- 9.1.2 Person failure to obtain LPG Certificate _ \$30.00 to \$90.00
- 9.1.3 Failure of concern to obtain LPG Certificate for employees who dispense LPG _ \$210.00 to \$900.00
- 9.1.4 Concern doing business under improper class ___ - \$140.00 to \$600.00
- 9.1.5 Failure to notify SFM of change of address _ \$60.00
- 9.1.6 Violation of the adopted Statute or Rules _ \$210.00 to \$900.00[

-] 9.2 Rationale.
 - 9.2.1 Double the fee plus the cost of the license.
 - 9.2.2 Double the fee plus the cost of the certificate.
 - 9.2.3 Double the fee plus the cost of the license.
 - 9.2.4 Double the fee.
 - 9.2.5 Based on two hours of inspection fee at \$30.00 per hour.
 - 9.2.6 Triple the fee.

KEY: liquefied petroleum gas
[January 2, 2002] August 15, 2002
Notice of Continuation July 5, 2001
53-7-305



Public Safety, Fire Marshal
R710-7
Concerns Servicing Automatic Fire
Suppression Systems

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 25067
 FILED: 07/01/2002, 18:13

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met and proposed that Rule R710-7 be amended. The Board directed that the rule be amended to increase the fees for licenses.

SUMMARY OF THE RULE OR CHANGE: The Utah Fire Prevention Board met in a regularly scheduled Board meeting and proposed that the following be amended: in Subsection R710-7-8(8.1.1.1), R710-7-8(8.1.1.2), and R710-7-8(8.1.1.3), the Board proposes to increase the license fees by 50% as approved in S.B. 1 by the Utah State Legislature. (DAR NOTE: S.B. 1 can be found at UT L 2002 Ch 277, and was effective 07/01/2002.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There would be an anticipated cost of \$200 to reprint the newly adopted rule and distribute it to all those affected by the rule change.
- ❖ LOCAL GOVERNMENTS: There would be no anticipated cost or savings to local government to instigate the proposed rule

change because the proposed rule change does not effect local government.

❖ OTHER PERSONS: There would be an anticipated cost to those companies that wish to license to market and install automatic fire suppression systems of \$100. The service only license or the branch license would each increase \$50. The aggregate anticipated cost to other persons of the above mentioned license fee increases would be approximately \$1,800.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for a license to market and install automatic fire suppression systems would be \$100. The compliance cost for a service only or branch license would each increase \$50.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be a fiscal impact assessed to those companies that license to market, install, or service automatic fire suppression systems in the State of Utah. This is the first increase in license fees in approximately 15 years. The concern owners will receive more time from the State Fire Marshal's Office to enforce this act. The concern owners are fully in favor of an increase in the license fees to pay for additional enforcement.

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

PUBLIC SAFETY
 FIRE MARSHAL
 Room 302
 5272 S COLLEGE DR
 MURRAY UT 84123-2611, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/14/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: Gary A. Wise, State Fire Marshal

R710. Public Safety, Fire Marshal.
R710-7. Concerns Servicing Automatic Fire Suppression Systems.

R710-7-1. Adoption of Codes.

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah State Fire Prevention Board adopts rules to provide regulation to those concerns that service Automatic Fire Suppression Systems. These rules do not apply to standpipe systems, deluge systems, or automatic fire sprinkler systems.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association, Standard 12, Standard on Carbon Dioxide Extinguishing Systems, 2000 edition; N.F.P.A., Standard 12A, Halon 1301 Fire Extinguishing Systems, 1997 edition; N.F.P.A., Standard 12B, Halon 1211 Fire Extinguishing Systems, 1990 edition; N.F.P.A., Standard 17, Standard for Dry Chemical Extinguishing Systems, 1998 edition; N.F.P.A., Standard 17A, Standard for Wet Chemical Extinguishing Systems, 1998 edition; N.F.P.A., Standard 96, Ventilation Control and Fire Protection of Commercial Cooking Operations, 2001 edition; N.F.P.A., Standard 2001, Clean Agent Fire Extinguishing Systems, 2000 edition. The definitions contained in these pamphlets shall pertain to these regulations.

1.2 Validity

If any section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the SFM, such decision shall not affect the validity of the remaining portion of these rules.

1.3 Systems Prohibited

No person shall market, distribute, sell, install or service any automatic fire suppression system in this state, unless:

1.3.1 It complies with these rules.

1.3.2 It has been tested by, and bears the label of a testing laboratory which is accepted by the SFM as qualified to test automatic fire suppression systems.

1.3.3 Automatic fire suppression systems using dry chemical, manufactured before November 1994, shall not be installed where grease laden vapors are produced. Systems in use prior to November 1994, are allowed to remain in service in the original installation.

1.4 Copies of the above listed codes are on file in the Office of Administrative Rules and the Office of the State Fire Marshal.

R710-7-2. Definitions.

2.1 "Annual" means a period of one year or 365 days.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Branch Office" means any location, other than the primary business location, where business license, telephone, advertising and servicing equipment is utilized.

2.4 "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

2.5 "Concern" means a person, firm, corporation, partnership, or association, licensed by the SFM.

2.6 "Employee" means those persons who work for a licensed concern which may include but are not limited to assigned agents and others who work on a contractual basis with a licensee using service tags of the licensed concern.

2.7 "Hydrostatic Test" means subjecting any cylinders requiring periodic pressure testing procedures specified in these rules.

2.8 "Inspection Authority" means the local fire authority, or the SFM, and their authorized representatives.

2.9 "License" means a written document issued by the SFM authorizing a concern to engage in the business of servicing automatic fire suppression systems.

2.10 "N.F.P.A." means National Fire Protection Association.

2.11 "Recognized Testing Laboratory" means a State Fire Marshal list of acceptable labs.

2.12 "Service" means a complete check of an automatic fire suppression system which includes the required service procedures

set forth by a manufacturer of an approved system or the minimum service requirements as provided as set forth in adopted N.F.P.A. standards.

2.13 "System" means an Automatic Fire Suppression System.

2.14 "SFM" means Utah State Fire Marshal.

2.15 "UCA" means Utah State Code Annotated, 1953 as amended.

R710-7-3. Licensing.

3.1 License Required

No person or concern shall engage in the business of selling, installing, servicing, repairing, testing or modifying any automatic fire suppression system without obtaining a license from the SFM, pursuant to these rules, expressly authorizing such concern to perform such acts.

3.2 Type of License

3.2.1 Every license shall be identified by type. The type of license shall be determined on the basis of the act or acts performed by the licensee or any of the employees. Every licensed concern shall be staffed by qualified personnel and shall be properly equipped to perform the act or acts for the type of license issued.

3.2.2 Licenses shall be any one, or combination of the following:

3.2.2.1 Class H1 - A licensed concern which is engaged in the installation, modification, service, or maintenance of engineered and/or pre-engineered automatic fire suppression systems.

3.2.2.2 Class H2 - A licensed concern which is engaged in service and maintenance only of automatic fire suppression systems to include hydrostatic testing.

3.3 Application

3.3.1 Application for a license to conduct business as an automatic fire suppression system concern, shall be made in writing to the SFM on forms provided by the SFM. A separate application for license shall be made for each separate place or business location of the applicant (branch office).

3.3.2 The application for a license to conduct business as an automatic fire suppression system concern, shall be accompanied with proof of public liability insurance. The public liability insurance shall be issued by a public liability insurance carrier showing coverage of at least \$100,000 for each incident, and \$300,000 in total coverage. The licensee shall notify the SFM within thirty days after the public liability insurance coverage required is no longer in effect for any reason.

3.4 Signature of Applicant

The application shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association other than a partnership, it shall be signed by a principal officer.

3.5 Equipment Inspection

The applicant or licensee shall allow the SFM and any of his authorized deputies to enter, examine, and inspect any premises, building, room or vehicle used by the applicant in the service of automatic fire suppression systems to determine compliance with the provisions of these rules. The inspection will be conducted during normal business hours, and the owner or manager shall be given a minimum of 24 hours notice before the appointed inspection. The equipment inspection may be conducted on an annual basis, and consent to inspect will be obtained. The applicant, license holder or certified employee of the license holder, may be asked during the inspection by the SFM or any of his deputies, to demonstrate skills

or knowledge used in servicing of automatic fire suppression systems.

3.6 Issuance and Posting of License

Following receipt of the properly completed application, and compliance with the provisions of the statute and these rules, the SFM shall issue a license. Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the premises of the licensed concern.

3.7 Original, Valid Date

Original licenses shall be valid from the date of issuance through December 31 of the year in which issued. Thereafter, each license shall be renewed annually and renewals shall be valid from January 1 through December 31. Original licenses purchased after July 1 and up to November 1 can be purchased one time, at a one-half year fee. Licenses issued on or after November 1 will be valid through December 31 of the following year.

3.8 Renewal, Valid Date

Application for renewal shall be made before January 1 of each year on forms provided by the SFM. The failure to renew the license will cause the license to become invalid on January 1 of the next year.

3.9 Duplicate License

A duplicate license may be issued by the SFM to replace any previously issued license, which has been lost or destroyed, upon request.

3.10 Refusal to Renew

SFM may refuse to renew any license that is authorized, pursuant to Section 8 of these rules. The applicant will, upon such refusal, have the same rights as are granted by Section 8 of these rules to an applicant for an original license which has been denied by the SFM.

3.11 Change of Address

Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of address or location of business.

3.12 Under Another Name

No licensee shall conduct the licensed business under a name other than the name or names which appears on the license.

3.13 Hiring and Termination

Every licensed concern shall, within thirty (30) days of employment or termination of an employee or contracted agent shall notify the SFM of the name, address, and certification number of that person.

3.14 Minimum Age

No license shall be issued to any person as licensee who is under eighteen (18) years of age.

3.15 Employer Responsibility

Every concern is responsible for the acts of its employees or assigned agents relating to installation and servicing of automatic fire suppression systems.

3.16 Restrictive Use

No license shall constitute authorization for any licensee, or any of the employees or contracted agents, to enter upon, or into, any property, building, or machinery without the consent of the owner or manager. No license shall grant authorization to enforce the Uniform Fire Code or these rules.

3.17 Non-Transferable

No license issued pursuant to this section shall be transferred from one concern to another.

3.18 Registration Number

Every license shall be identified by a number, delineated as H-(number). Such number may only be transferred from one concern to another when approved by the SFM.

3.19 Minimum Materials and Equipment Required

At each business location or vehicle of the applicant where servicing work is performed the following minimum material and equipment requirements shall be maintained:

3.19.1 Calibrated scales with ability to:

3.19.1.1 Weigh gas cartridges to within 1/4 ounce of manufacturers specifications.

3.19.1.2 Weigh cylinders accurately for systems being serviced.

3.19.2 Nitrogen Pressure Filling Equipment

3.19.2.1 Nitrogen Supply

3.19.2.2 Pressure Regulator - 750 p.s.i. minimum

3.19.2.3 Filling Adapters

3.19.3 Dry Chemical Systems

3.19.3.1 Extinguishing agents, compatible with systems serviced

3.19.3.2 Fusible links

3.19.3.3 Safety pins

3.19.3.4 An assortment of gaskets and "O" Rings compatible with systems serviced

3.19.3.5 Gas cartridges as required according to manufacture's specifications

3.19.3.6 Current reference manuals, to include manufacture's service manuals

3.19.3.7 Cocking or Lockout Tool

3.19.4 Halon and CO2 Systems

3.19.4.1 Have access to, or meet the requirements for a U.L. approved filling station.

3.19.4.2 Have available in inventory, or have immediate access to, detectors compatible with systems serviced.

3.19.4.3 Calibration equipment such as electrical testers and detector testers.

3.19.4.4 Control panel components

3.19.4.5 Release valves

3.19.4.6 Current reference manuals

This list does not, however, include all items that may be necessary in order to conduct a complete system installation, modification or service.

3.20 Records

Accurate records shall be maintained for five years back by the licensee of all service work performed. These records shall be made available to the SFM, or authorized deputies, upon request. These records shall include the following:

3.20.1 The name and address of all serviced locations

3.20.2 Type of service performed

3.20.3 Date and name of person performing the work

R710-7-4. Certificates of Registration.

4.1 Required Certificates of Registration

No person shall service any automatic fire suppression system without a certificate of registration issued by the SFM pursuant to these rules expressly authorizing such person to perform such acts.

4.2 Application

Application for a certificate of registration to work on automatic fire suppression systems shall be made in writing to the SFM on forms provided by the SFM. The application shall be signed by the applicant.

4.3 Examination

The SFM shall require all applicants for a certificate of registration to take and pass a written examination, which may be supplemented by practical tests to determine the applicant's knowledge to work on automatic fire suppression systems. Pictured identification of the applicant for a certificate of registration may be requested by the SFM or his deputies. Examinations will be given according to the following schedule:

4.3.1 On the first and third Tuesdays of each month. When holidays conflict with these days, the day immediately following will be used. An appointment will be made to take an examination at least 24 hours in advance of the examination date.

4.3.2 Examinations may be given at various field locations as deemed necessary by the SFM. Appointments for field examinations are required.

4.4 Examination - Passing Grade

To successfully pass the written examination, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken.

4.5 Contents of Examination

The examination required shall include a written test of the applicant's knowledge of the work to be performed, the provisions of these rules, and may include an actual demonstration of his ability to perform the acts indicated on the application.

4.6 Right to Contest

Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination. Every contention as to the validity of individual questions of the examination shall be made in writing within 48 hours after taking said examination. The decision of the SFM shall be final.

4.7 Issuance

Following receipt of the completed application, compliance with the provisions of these rules, and the successful completion of the required examination, the SFM shall issue a certificate of registration.

4.8 Original and Renewal Valid Date

Original certificates of registration will be valid from the date of issuance through December 31 of the year in which issued. Thereafter, each certificate of registration will be renewed annually and renewals will be valid from January 1 through December 31. Original certificates purchased after July 1 and up to November 1 can be purchased one time, at a one-half year fee. The failure to renew a certificate of registration will cause the certificate of registration to become invalid of January 1 of the next year. The holder of an invalid certificate of registration shall not perform any work on automatic fire suppression systems. Original certificates of registration issued on or after November 1 will be valid through December 31 of the following year.

4.9 Renewal Date

Application for renewal will be made before January 1st of each year. Application for renewal will be made in writing on forms provided by the SFM.

4.10 Re-examination

Every holder of a valid certificate of registration will take a re-examination every five (5) years, from the date of original certificate, to comply with the provisions of Section 4.3 of these rules as follows:

4.10.1. The re-examination to comply with the provisions of Section 4.3 of these rules shall consist of one 25 question open book

examination to be mailed to the certificate holder at least 60 days before the renewal date.

4.10.2 The 25 question re-examination will consist of questions that focus on changes in the last five years to the NFPA standards, the statute, and adopted practices of concerns noted by the Board or SFM.

4.10.3 The certificate holder is responsible to complete the re-examination and return it to the SFM in sufficient time to renew.

4.10.4 The certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

4.11 Refusal to Renew

The SFM may refuse to renew any certificate of registration for the reasons that is authorized pursuant to Section 8 of these rules. The applicant will, upon such refusal, have the same rights as are granted by Section 8 of these rules to an applicant for an original certificate of registration which has been denied by the SFM.

4.12 Inspection

The holder of a certificate of registration will submit such certificate for inspection, upon request of the SFM, any authorized deputies, or any local fire official.

4.13 Change of Address

Any change of address of any holder of a certificate of registration will be reported by the registered person to the SFM within thirty (30) days of such change. Such change will also be made by the holder of the certificate of registration on the reverse side of the certificate of registration card.

4.14 Duplicate

A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate which has been lost or destroyed.

4.15 Minimum Age

No certificate of registration shall be issued to any person who is under eighteen (18) years of age.

4.16 Restrictive Use

4.16.1 No certificate of registration will constitute authorization for any person to enter upon or into any property or building.

4.16.2 No certificate of registration will constitute authorization for any person to enforce any provisions of these rules or the Uniform Fire Code.

4.16.3 Regardless of the acts authorized to be performed by the licensed concern, only those acts for which the applicant for a certificate of registration has qualified will be permissible by such applicant.

4.17 Non-Transferable

Certificates of registration will not be transferable. Individual certificates of registration will be carried by the person to whom issued.

4.18 Limited Issuance

No certificate of registration will be issued to any person unless that person is a licensee or an employee of a licensed concern.

4.19 New Employees

New employees of a licensed concern may perform the various acts while under the direct supervision of a person holding a valid certificate of registration for a period not to exceed forty-five (45) days from the initial date of employment.

4.20 Certificate Identification

Every certificate will be identified by a number, delineated as HE-(number).

R710-7-5. Service Tags and Labels.**5.1 Size and Color**

Tags shall be not more than five and one-half inches (5-1/2") in height, nor less than four and one-half inches (4-1/2") in height, and not more than three inches (3") in width, nor less than two and one-half inches (2-1/2") in width. Tags may be any color except red.

5.2 Attaching Tag

One service tag will be attached to each automatic fire suppression system in such a position as to be conveniently inspected

5.3 Signature and Certificate Number

5.3.1 The signature and certificate of registration number of the person performing the work shall be signed legibly on the service tag.

5.3.2 All information pertaining to complete date, type of servicing, and type of system will be indicated on the tag by perforations in the appropriate space provided.

5.4 New Tag

A new service tag will be attached to a properly functioning system each time service is performed. A system not in compliance shall not receive a service tag, but shall receive a non-compliance tag as required in Section 5.8.

5.5 Tag Warning

The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

5.6 Removal

No person shall deface, modify, alter or remove any active service label or tag attached to or required to be attached to any automatic fire suppression system.

5.7 Service Tag Information

All service tags shall be designed as required by the SFM.

5.8 Six Year Maintenance and Hydrostatic Test Labels

5.8.1 Six year maintenance and hydrostatic test labels will be affixed by a heatless process. The labels will be applied only when the system is recharged or undergoes six year maintenance servicing or hydrostatic testing.

5.8.2 Six year maintenance and hydrostatic test labels shall be durable to withstand the effects of weather and adverse conditions.

5.8.3 Six year maintenance and hydrostatic test labels will be designed as shown below:

EXAMPLE OF SIX YEAR AND HYDROSTATIC TEST LABEL

5.9 Non-Compliance Tags

5.9.1 Non-compliance tags will be affixed to any system failing to meet service specifications and will be placed in a conspicuous location on that system.

5.9.2 Non-compliance tags shall be red in color.

5.9.3 A system shall receive a non-compliance tag, when the system fails to fully comply with manufactures specifications or these rules.

5.9.4 After placing the non-compliance tag on the system, the service person shall notify the local fire chief or his authorized representative. The service person shall also furnish a copy of the service report to the authority having jurisdiction.

5.9.5 Non-compliance tags will be designed as required by the SFM.

R710-7-6. Requirements For All Approved Systems.**6.1 Service**

6.1.1 Maintenance will be conducted on extinguishing systems at least every six months or immediately after use or activation.

6.1.2 When fusible links are a required portion of the system, fusible links will be replaced yearly or as required by the manufacturer of the system.

6.1.3 Fusible links will show the date when installed by year only.

6.1.4 Fusible links will not be used after February 1 of the next year showing a previous years date.

6.2 Interchanging of Parts

Interchanging of parts from different manufactured systems is prohibited. Parts shall be specifically listed and compatible for use with the designed system.

6.3 Return of parts

All replaced parts to the system serviced will be returned to the system owner or manager after completion of the service. Parts that are required to be returned to the manufacturer due to warranty are exempt.

6.4 Restricted Service

Any system requiring a hydrostatic test, will not be serviced until such system has been subjected to, and passed, the required test. A non-compliance tag will not be accepted to meet the requirements of this section.

6.5 Service

At the time of installation, and during any service, all servicing will be done in accordance with the manufacturers instructions, adopted statutes, and these rules. Systems will be placed and remain in an operable condition, free from defects which may cause malfunctions. Discharge nozzles and piping will be free of obstructions or substances.

R710-7-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 The issuance, renewal, or continued validity of a license or certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant, person employed for, or the person having authority and management of a concern servicing automatic fire suppression systems commits any of the following violations:

7.2.1 The person or applicant is not the real person in interest.

7.2.2 Material misrepresentation or false statement on the application.

7.2.3 Refusal to allow inspection by the SFM, his duly authorized deputies.

7.2.4 The person or applicant for a license or certificate of registration does not have the proper facilities and equipment, to conduct the operations for which application is made.

7.2.5 The person or applicant for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application was made, as evidenced by failure to pass the examination and practical tests pursuant to Section 4.2 of these rules.

7.2.6 The person or applicant has been convicted of any of the following:

7.2.6.1 a violation of the provisions of these rules;

7.2.6.2 a crime of violence or theft; or

7.2.6.3 any crime that bears upon the person or applicant's ability to perform their functions and duties.

7.2.7 The person servicing automatic fire suppression systems does not maintain adequate facilities, equipment, or knowledge, to conduct operations as required in the manufacturer's instructions, statute, and rules.

7.2.8 The person or applicant is involved in conduct which could be considered criminal, although such conduct did not result in the filing of criminal charges against the person, but where the evidence shows that the criminal act did occur, that the person committed the act, and that the burden by a preponderance of evidence could be established.

7.3 A person whose license or certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the Board if requested by that person within 20 days after receiving notice.

7.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

7.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.7 Reconsideration of the Board decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose license or certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

7.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

R710-7-8. Fees.

8.1 Fee Schedule

8.1.1 Licenses (New and Renewals)

8.1.1.1 Type H1 (Marketing and Installation) ~~200.00~~ 300.00

If the concern currently is licensed to service portable fire extinguishers the fee is \$100.00.

8.1.1.2 Type H2 (Service Only) ~~100.00~~ 150.00

If the concern currently is licensed to service portable fire extinguishers the fee is \$50.00.

8.1.1.3 Branch Office License. ~~100.00~~ 150.00

8.1.2 Certificates of Registration (New and Renewals)

8.1.2.1 Certificate of Registration. \$30.00

If the individual currently is certified as a portable fire extinguisher technician the fee is. \$10.00

8.1.3 License Transfer \$50.00

8.1.4 Examinations

8.1.4.1 Initial Examination. \$20.00

8.1.4.2 Re-Examination \$15.00

8.1.4.3 Five (5) Year Examination. \$20.00

8.2 Payment of Fees

The required fee will accompany the application for license or certificate of registration. License or certificate of registration fees will be refunded if the application is denied.

8.3 Late Renewal Fees

8.3.1 Any license or certificate of registration not renewed before January 1 will be subject to an additional fee equal to 10% of the required inspection fee.

8.3.2 When a certificate of registration has expired for more than one year, an application will be made for an original certificate as if the application was being made for the first time. Examinations will be re-taken with initial fees.

KEY: fire prevention, systems
[May 16, 2002] August 15, 2002
Notice of Continuation June 11, 2002
53-7-204



Public Safety, Fire Marshal
R710-9
Rules Pursuant to the Utah Fire
Prevention Law

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25057

FILED: 06/28/2002, 12:57

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met and proposed that Rule R710-9 be amended. The Board directed that the existing rule be amended with regard to Residential Group R-4 occupancies and one other minor correction.

SUMMARY OF THE RULE OR CHANGE: The Fire Prevention Board met in a regularly scheduled Board meeting on May 14, 2002, and proposed that the following be completed by amending the existing rule to add the following: 1) in Subsection R710-9-6(6.3.2), the Board proposes to add the exception that in Residential Group R-4 occupancies that are not over 4,500 gross square feet, do not house more than 16 residents, and have an approved fire alarm system that is interconnected, will not be required to place an automatic fire sprinkler system in that occupancy; and 2) in Subsection R710-9-17(17.2), the Board proposes to correct the listing of Uniform Fire Code to International Fire Code which would be consistent with the currently adopted incorporated reference.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There would be an anticipated cost of \$400 to reprint the newly adopted rule and distribute it to all those affected by the rule change.

❖ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government to instigate the proposed rule change because the proposed rule change does not effect local government.

❖ OTHER PERSONS: There would be an anticipated savings seen to those that have a Residential Group R-4 occupancy that would be allowed to install an approved and interconnected fire alarm system rather than the intrusive requirement to install a fire sprinkler system in an existing facility. The savings would be approximately \$2.50 per square foot times the size of the occupancy that would need to be fire sprinklered. Aggregate anticipated savings is impossible to accurately state due to the unknown amount of Residential Group R-4 facilities to be built or remodeled, and the size of each facility figured on a square foot basis.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons only possible savings as described in "Other Persons" above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There would be no fiscal impact on businesses from the enactment of this proposed rule change. There would be a savings seen from the enactment of this rule rather than a cost to businesses.

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

PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/14/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: Gary A. Wise, State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-9. Rules Pursuant to the Utah Fire Prevention Law.

R710-9-1. Title and Authority.

1.1 These rules shall be known as the "Rules Pursuant to the Utah Fire Prevention Law", and may be cited as such, and will be hereafter referred to as "these rules".

1.2 These rules are promulgated in accordance with Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, as amended.

R710-9-2. Definitions.

2.1 "Academy" means Utah Fire and Rescue Academy.

2.2 "Academy Director" means the Director of the Utah Fire and Rescue Academy.

2.3 "Administrator" means Fire Service Education Administrator.

2.4 "Board" means Utah Fire Prevention Board.

2.5 "Certification Council" means Utah Fire Service Certification Council.

2.6 "Coordinator" means Fire Education Program Coordinator.

2.7 "Division" means State Fire Marshal.

2.8 "ICC" means International Code Council, Inc.

2.9 "IFC" means International Fire Code.

2.10 "Institutional occupancy" means asylums, mental hospitals, hospitals, sanitariums, homes for the aged, residential health care facilities, children's homes or institutions, or any similar institutional occupancy.

2.11 "LFA" means Local Fire Authority.

2.12 "NFPA" means National Fire Protection Association.

2.13 "Place of assembly" means where 50 or more people gather together in a building, structure, tent, or room for the purpose of amusement, entertainment, instruction, or education.

2.14 "Plan" means Fire Academy Strategic Plan.

2.15 "SFM" means State Fire Marshal.

2.16 "Standards Council" means Fire Service Standards and Training Council.

2.17 "Sub-Committee" means Fire Prevention Board Budget Sub-Committee or Amendment Sub-Committee.

2.18 "UCA" means Utah Code Annotated, 1953.

R710-9-3. Specific Editions of the Fire Code and Standards.

3.1 The International Fire Code (IFC), 2000 edition, excluding appendices, as promulgated by the International Code Council, Inc., is hereby adopted and incorporated by reference as the state fire code, for the safeguarding of life and property from the hazards of fire and explosion, except as amended by provisions listed in R710-9-6, et seq.

3.2 National Fire Protection Association (NFPA), Standard 160, Standard for Flame Effects Before an Audience, 1998 edition, except as amended by provisions listed in R710-9-6, et seq.

R710-9-4. Conduct of Board Members and Board Meetings.

4.1 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman or the chairman's designee.

4.2 A quorum shall be required to approve any action of the Board.

4.3 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.

4.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the division, not less than 21 days before the regularly scheduled Board meetings.

4.5 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

4.6 The division shall provide the Board with a secretary who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least 14 days prior to the scheduled Board meeting.

4.7 A Board members standing on the Board shall come under review after two unexcused absences in one year from regularly scheduled board meetings. The Board members name shall be submitted to the governors office for status review.

R710-9-5. Procedures to Amend the International Fire Code.

5.1 All requests for amendments to the IFC shall be submitted to the division on forms created by the division, for presentation to the Board at the next regularly scheduled Board meeting.

5.2 Requests for amendments received by the division less than 21 days prior to any regularly scheduled meeting of the Board may be delayed in presentation until the next regularly scheduled Board meeting.

5.3 Upon presentation of a proposed amendment, the Board shall do one of the following:

5.3.1 accept the proposed amendment as submitted or as modified by the Board;

5.3.2 reject the proposed amendment;

5.3.3 submit the proposed amendment to the Board Amendment Subcommittee for further study; or

5.3.4 return the proposed amendment to the requesting agency, accompanied by Board comments, allowing the requesting agency to resubmit the proposed amendment with modifications.

5.4 The Board Amendment Subcommittee shall report its recommendation to the Board at the next regularly scheduled Board meeting.

5.5 The Board shall make a final decision on the proposed amendment at the next Board meeting following the original submission.

5.6 The Board may reconsider any request for amendment, reverse or modify any previous action by majority vote.

5.7 When approved by the Board, the requesting agency shall provide to the division within 45 days, the completed ordinance.

5.8 The division shall maintain a list of amendments to the IFC that have been granted by the Board.

5.9 The division shall make available to any person or agency copies of the approved amendments upon request, and may charge a reasonable fee for multiple copies in accordance with the provisions of UCA, 63-2-203.

R710-9-6. Amendments and Additions.

The following amendments and additions are hereby adopted by the Board for application statewide:

6.1 Institutional

6.1.1 IFC, Chapter 2, Section 202, Educational Group E, Day care is amended as follows: On line three delete the word "five" and replace it with the word "four".

6.1.2 IFC, Chapter 2, Section 202, Institutional Group I-1 is amended to add the following: On line nine add "type 1" in front of the words "assisted living facilities".

6.1.3 IFC, Chapter 2 Section 202, Institutional Group I-2 is amended as follows: On line three delete the word "five" and replace it with the word "three". On line eight after the words "detoxification facilities" delete the rest of the paragraph, and add the following: "ambulatory surgical centers with two or more operating rooms where care is less than 24 hours and type 2 assisted living facilities. Type 2 assisted living facilities with five or fewer persons shall be classified as a Group R-4. Type 2 assisted living facilities with at least six and not more than 16 residents shall be classified as a Group I-1 facility.

6.1.4 IFC, Chapter 2, Section 202, Institutional Group I-2, Child care facility is amended as follows: On line two delete the word "five" and replace it with the word "four".

6.1.5 IFC, Chapter 2, Section 202, Institutional Group I-4 day care facilities, Child care facility is amended as follows: On line three delete the word "five" and replace it with the word "four". Also on line two of the Exception delete the word "five" and replace it with the word "four".

6.2 Record Drawings

6.2.1 IFC, Chapter 9, Section 901.2.1 is amended to add the following: The code official has the authority to request record drawings ("as built") to verify any modifications to the previously approved construction documents.

6.2.2 IFC, Chapter 9, Section 902.1 Definitions, RECORD DRAWINGS is deleted and rewritten as follows: Drawings ("as built") that document all aspects of a fire protection system as installed.

6.3 Automatic Fire Sprinkler Systems

6.3.1 IFC, Chapter 9, Section 903.2.5 is deleted to include the exception and rewritten as follows: An automatic fire sprinkler system shall be provided throughout buildings with Group I fire areas. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

6.3.2 IFC, Chapter 9, Section 903.2.9 is amended to add the following: Exception: Buildings not more than 4500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system.

6.4 Class K Portable Fire Extinguishers

6.4.1 IFC, Chapter 9, Section 906.4, and NFPA, Standard 10, Section 2-3.2, 1998 edition, is deleted and replaced with the following:

6.4.1.1 Class K labeled portable fire extinguishers shall be provided for the protection of commercial food heat-processing equipment using vegetable or animal oils and fat cooking media. A placard shall be provided and placed above the Class K portable fire extinguisher that states that if a fire protection system exists, it shall be activated prior to use of the Class K portable fire extinguisher.

6.4.1.2 Those existing sodium or potassium bicarbonate dry-chemical portable fire extinguishers, having a minimum rating of 40-BC, and specifically placed for protection of commercial food heat-processing equipment, shall be allowed to remain in use in the kitchen area to provide protection to hazards other than the commercial food heat-processing oils and cooking media.

6.5 Retroactive Installations of Automatic Fire Alarm Systems in Existing Buildings

6.5.1 IFC, Chapter 9, Sections 907.3.1.1, 907.3.1.2, 907.3.1.3, 907.3.1.4, 907.3.1.6, 907.3.1.7, 907.3.1.8 and 907.3.1.9 are deleted.

6.6 Backflow Protection

6.6.1 The potable water supply to automatic fire sprinkler systems and standpipe systems shall be protected against backflow as required in Utah Administrative Code, R156-56-707(41).

6.7 Exit Signs

6.7.1 IFC, Chapter 10, Section 1003.2.10 is amended to add the following section: 1003.2.10.1.1 Floor-level exit signs. Where exit signs are required in Section 1003.2.10.1, additional approved exit signs that are internally or externally illuminated, photo luminescent or self-luminous, shall be provided in all corridors serving guest rooms of R-1 occupancies and amusement building exits. The bottom of such signs shall not be less than six inches

(152mm) nor more than 8 inches (203mm) above the floor level and shall indicate the path of travel. For exit and access doors, the sign shall be on the door or adjacent to the door with the closest edge of the sign within eight inches (203mm) of the door frame.

6.8 Fireworks

6.8.1 IFC, Chapter 33, Section 3301.1.3 is amended to add the following Exception: 5. The use of fireworks for display and retail sales is allowed as set forth in UCA 53-7-220 and UCA 11-3-1.

6.9 Flammable and Combustible Liquids

6.9.1 IFC, Chapter 34, Section 3404.4.3 is amended as follows: Delete 3403.6 on line three and replace it with 3403.4.

6.10 Liquefied Petroleum Gas

6.10.1 IFC, Chapter 38, Section 3809.12, is amended as follows: Delete 20 from line three and replace it with 10.

R710-9-7. Fire Advisory and Code Analysis Committee.

7.1 There is created by the Board a Fire Advisory and Code Analysis Committee whose duties are to provide direction to the Board in the matters of fire prevention and building codes.

7.2 The committee shall serve in an advisory position to the Board, members shall be appointed by the Board, shall serve for a term of three years, and shall consist of the following members:

7.2.1 A member of the State Fire Marshal's Office.

7.2.2 The Code Committee Chairman of the Fire Marshal's Association of Utah.

7.2.3 A fire marshal from a local fire department.

7.2.4 A fire inspector or fire officer involved in fire prevention duties.

7.2.5 A member appointed at large.

7.3 This committee shall join together with the Uniform Building Code Commission Fire Protection Advisory Committee to form the Unified Code Analysis Council.

7.4 The Council shall meet as directed by the Board or as directed by the Building Codes Commission or as needed to review fire prevention and building code issues that require definitive and specific analysis.

7.5 The Council shall select one of its members to act in the position of chair and another to act as vice chair. The chair and vice chair shall serve for one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

7.6 The chair or vice chair of the council shall report to the Board or Building Codes Commission recommendations of the Council with regard to the review of fire and building codes.

R710-9-8. Fire Service Education Administrator and Fire Education Program Coordinator.

8.1 There is created by the Board a Fire Service Education Administrator for the State of Utah. This Administrator shall be the State Fire Marshal.

8.2 The Administrator shall oversee statewide fire service education of all personnel receiving training monies from the Fire Academy Support Account.

8.2.1 The Administrator shall oversee fire service education in fire suppression, fire prevention, fire administration, operations, hazardous materials, rescue, fire investigation, and public fire education in the State of Utah.

8.3 The Administrator shall dedicate sufficient time and efforts to ensure that those monies dedicated from the Fire Academy Support Account are expended in the best interests of all personnel receiving fire service education.

8.4 The Administrator shall ensure equitable monies are expended in fire service education to volunteer, career, and prospective fire service personnel.

8.5 The Administrator shall as directed by the Board, solicit the legislature for funding to ensure that fire service personnel receive sufficient monies to receive the education necessary to prevent loss of life or property.

8.6 The Administrator shall oversee the Fire Department Assistance Grant program by completing the following:

8.6.1 Insure that a broad based selection committee is impaneled each year.

8.6.2 Compile for presentation to the Board the proposed grants.

8.6.3 Receive the Board's approval before issuing the grants.

8.7 The Administrator shall if necessary, establish proposed changes to fire service education statewide, insuring personnel receive the most proficient and professional training available, insure completion of agreements and contracts, and insure that payments on agreements and contracts are completed expeditiously.

8.8 The Administrator shall report to the Board at each regularly scheduled Board meeting the current status of fire service education statewide. The Administrator shall present any proposed changes in fire service education to the Board, and receive direction and approval from the Board, before making those changes.

8.9 To assist the Administrator in statewide fire service education there is hereby created a Fire Education Program Coordinator.

8.10 The Coordinator shall conduct fire service education evaluations, budget reviews, performance audits, and oversee the effectiveness of fire service education statewide.

8.11 The Coordinator shall ensure that there is an established Utah Fire Service Strategic Training Plan for fire service education statewide. The Coordinator shall work with the Academy Director to update the Strategic Plan and keep it current to the needs of the fire service.

8.12 The Coordinator shall report findings of audits, budgetary reviews, training contracts or agreements, evaluation of training standards, and any other necessary items of interest with regard to fire service education to the Administrator.

8.13 The Coordinator shall ensure that contracts are established each year for training and education of fire personnel that meets the needs of those involved in fire service education statewide.

8.14 The Coordinator shall be the staff assistant to the Fire Service Standards and Training Council and shall present agenda items to the Council Chair that need resolution or review. As the staff assistant to the Training Council, the coordinator shall ensure that appointed members attend, encourage that the decisions made further the interests of fire service education statewide, and ensure that the Board is kept informed of the Training Council's decisions.

R710-9-9. Enforcement of the Rules of the State Fire Marshal.

9.1 Fire and life safety plan reviews of new construction, additions, and remodels of state owned facilities shall be conducted by the SFM, or his authorized deputies. State owned facilities shall be inspected by the SFM, or his authorized deputies.

9.2 Fire and life safety plan reviews of new construction, additions, and remodels of public and private schools shall be completed by the SFM, or his authorized deputies, and the LFA.

9.3 Fire and life safety plan reviews of new construction, additions, and remodels of publicly owned buildings, privately

owned colleges and universities, and institutional occupancies, with the exception of state owned buildings, shall be completed by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall complete the plan review.

9.4 The following listed occupancies shall be inspected by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall inspect.

9.4.1 Publicly owned buildings other than state owned buildings as referenced in 9.1 of this rule.

9.4.2 Public and private schools.

9.4.3 Privately owned colleges and universities.

9.4.4 Institutional occupancies as defined in Section 9-2 of this rule.

9.4.5 Places of assembly as defined in Section 9-2 of this rule.

9.5 The Board shall require prior to approval of a grant the following:

9.5.1 That the applying fire agency be actively participating in the statewide fire statistics reporting program.

9.5.2 The Board shall also require that the applying fire agency be actively working towards structural or wildland firefighter certification through the Utah Fire Service Certification System.

R710-9-10. Fire Service Standards and Training Council.

10.1 There is created by the Board, the Fire Service Standards and Training Council, whose duties are to provide direction to the Board and Academy in matters relating to fire service standards, training, and certification.

10.2 This Council shall serve in an advisory position to the Board, members shall be appointed by the Board, shall serve three year terms, and shall consist of the following members:

10.2.1 Representative from the Utah State Fire Chiefs Association.

10.2.2 Representative from the Utah State Firemen's Association.

10.2.3 Representative from the Fire Marshal's Association of Utah.

10.2.4 Specialist in hazardous materials representing the Hazardous Materials Institute.

10.2.5 Fire/arson investigator representing the Utah Chapter of the International Association of Arson Investigators.

10.2.6 Specialist in wildland fire suppression and prevention from the Utah State Division of Forestry, Fire and State Lands.

10.2.7 Representative from the International Association of Firefighters.

10.2.8 Representative from the Utah Fire Service Certification Council.

10.2.9 Representative from the fire service that sits on the Utah State Emergency Medical Services Committee.

10.2.10 Representative from the Utah Fire Training Officers Association.

10.3 The Council shall meet quarterly and may hold other meetings as necessary for proper transaction of business. The majority of the Council shall be present to constitute a quorum.

10.4 The Council shall select one of its members to act in the position of chair, and another member to act as vice chair. The chair and vice chair shall serve one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year. If voted upon by the council, the vice chair will become the chair the next succeeding calendar year.

10.5 If a council member has two or more unexcused absences during a 12 month period, from regularly scheduled Council meetings, it is considered grounds for dismissal pending review by the Board. The Coordinator shall submit the name of the Council member to the Board for status review.

10.6 A member of the Council may have a representative of their respective organization sit in proxy of that member, if submitted in writing and approved by the Coordinator prior to the meeting.

10.7 The Chair or Vice Chair of the Council shall report to the Board the activities of the Council at regularly scheduled Board meetings. The Coordinator may report to the Board the activities of the Council in the absence of the Chair or Vice Chair.

10.8 The Council shall consider all subjects presented to them, subjects assigned to them by the Board, and shall report their recommendations to the Board at regularly scheduled Board meetings.

R710-9-11. Fire Prevention Board Budget and Amendment Sub-Committees.

11.1 There is created two Fire Prevention Board Sub-Committees known as the Budget Subcommittee and the Amendment Subcommittee. The subcommittees membership shall be appointed from members of the Board.

11.2 Membership on the Sub-Committee shall be by appointment of the Board Chair or as volunteered by Board members. Membership on the Sub-Committee shall be limited to four Board members.

11.3 The Sub-Committee shall meet as necessary and shall vote and appoint a chair to represent the Sub-Committee at regularly scheduled Board meetings.

R710-9-12. Utah Fire Service Certification Council.

12.1 There is created by the Board, the Utah Fire Service Certification Council, whose duties are to oversee fire service certification in the State of Utah.

12.2 The Certification Council shall be made up of 12 members, appointed by the Academy Director, approved by the Board, and each member shall serve three year terms.

12.3 The Certification Council shall be made up of users of the certification system and comprise both paid and volunteer fire personnel, members with special expertise, and members from various geographical locations in the state.

12.4 The purpose of the Certification Council is to provide direction on all aspects of certification, and shall report the activities of the Certification Council to the Fire Service Standards and Training Council.

12.5 Functioning of the Certification Council with regard to certification, re-certification, testing, meeting procedures, examinations, suspension, denial, annulment, revocation, appeals, and reciprocity, shall be conducted as specified in the Utah Fire Service Voluntary Certification Program, Policy and Procedures Manual.

12.6 A copy of the Utah Fire Service Voluntary Certification Program, Policy and Procedures Manual, shall be kept on file at the State Fire Marshal's Office and the Utah Fire and Rescue Academy.

R710-9-13. Utah Fire and Rescue Academy.

13.1 The fire service training school shall be known as the Utah Fire and Rescue Academy.

13.2 The Director of the Utah Fire and Rescue Academy shall report to the Administrator the activities of the Academy with regard to completion of the agreed academy contract.

13.3 The Academy Director may recommend to the Administrator or Coordinator new or expanded standards regarding fire suppression, fire prevention, public fire education, safety, certification, and any other items of necessary interest about the Academy.

13.4 The Academy shall receive approval from the Administrator, after being presented to the Standards and Training Council, any substantial changes in Academy training programs that vary from the agreed contract.

13.5 The Academy Director shall provide to the Coordinator by October 1st of each year, a numerical summary of those students attending the Academy in the following categories:

13.6.1 Those participating in the certification process and those who have received certification during the previous contract period.

13.6.2 Those working towards and those who have received an Associate in Fire Science in the previous contract period.

13.6.3 Those who have completed other Academy classes during the previous contract period.

13.6 The Academy Director shall provide to the Coordinator by October 1st of each year, a numerical comparison of the categories required in Section 13.5, comparing attendance in the previous contract period.

13.7 The Academy Director shall provide to the Coordinator by October 1st of each year, in accepted budgeting practices, a cost analysis of classes provided by the Academy, and the cost per student to the Academy to provide those classes.

13.8 The Academy Director shall provide to the Coordinator by October 1st of each year, a numerical summary of those students attending Academy courses in the following categories:

13.8.1 Non-fire service personnel enrolled in college courses.

13.8.2 Volunteer or career fire service personnel enrolled in college credit courses.

13.8.3 Volunteer or career fire service personnel enrolled in non-credit continuing education courses.

13.9 The Academy Director shall present to the Coordinator by January of each year, proposals to be incorporated in the Academy contract for the next fiscal year.

R710-9-14. Deputizing Persons to Act as Special Deputy State Fire Marshals.

14.1 Special deputy state fire marshals may be appointed by the SFM to positions of expertise within the regular scope of the Fire Marshal's Office.

14.2 Special deputy state fire marshals may also be appointed to assist the Fire Marshal's Office in establishing and maintaining minimum fire prevention standards in those occupancies listed in the Fire Prevention Law.

14.3 Special deputy state fire marshals shall be appointed after review by the State Fire Marshal in regard to their qualifications and the overall benefit to the Office of the State Fire Marshal.

14.4 Special deputy state fire marshals shall be appointed by completing an oath and shall be appointed for a specific period of time.

14.5 Special deputy state fire marshals shall have a picture identification card and shall carry that card when performing their assigned duties.

R710-9-15. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-9-16. Validity.

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-9-17. Adjudicative Proceedings.

17.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

17.2 If a city, county, or fire protection district refuses to establish a method of appeal regarding a portion of the ~~[UFC]~~[IFC], the appealing party may petition the Board to act as the board of appeals.

17.3 A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the Board within 20 days after receiving final decision.

17.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with UCA, Section 63-46b-3.

17.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

17.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

17.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

17.8 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

KEY: fire prevention, law

~~[January 2, 2002]~~**August 15, 2002**

Notice of Continuation June 12, 2002

53-7-204



Regents (Board Of), Administration

R765-605

Utah Centennial Opportunity Program
for Education

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 25062

FILED: 07/01/2002, 12:24

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments correct some internal references and modify Subsections R765-605-4(4.8.1.2)(a) and (b) and adds a new Subsection R765-605-4(4.8.1.5).

SUMMARY OF THE RULE OR CHANGE: The amendments correct some internal references and modify Subsections R765-605-4(4.8.1.2)(a) and (b) to eliminate the requirement for institutions with larger Utah Centennial Opportunity Program for Education (UCOPE) allocations to dedicate portions of their allocations for work-study stipends, while making clear that all institutions continue to have the option to use all or any portions of their allocations for work-study stipends. The new Subsection R765-605-4(4.8.1.5) provides specific authority for institutions to carry forward or carry back up to 10% of their UCOPE allocations from one fiscal year to another. It also provides an escape clause for a larger percentage carry forward or carry back if exceptional circumstances justify such action, with advance approval from the UCOPE program administrator.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 53B, Chapter 13a

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** These changes do not affect the total amounts of any state budget, but only how funds are allocated for use by the institutions.

❖ **LOCAL GOVERNMENTS:** These changes do not affect local government, but only students and institutions of higher education.

❖ **OTHER PERSONS:** Because these amendments will allow some institutions to allocate less of their total UCOPE funds to work-study stipends, the number of students receiving such stipends and/or the amount of such financial aid assistance received by the student recipients at those Utah higher education institutions may be affected, at the discretion of the institution. The amount of the changes in each case will depend of decisions made by the financial aid officers at the respective institutions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because these amendments will allow some institutions to allocate less of their total UCOPE funds to work-study stipends, the number of students receiving such stipends and/or the amount of such financial aid assistance received by the student recipients at those Utah higher education institutions may be affected, at the discretion of the institution. The amount of the changes in each case will depend of decisions made by the financial aid officers at the respective institutions.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These amendments will have no direct fiscal impact on businesses. Most work-study jobs are at the institutions. A business which had arrangements to provide such work-study jobs could have more or fewer students available for the program.

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

REGENTS (BOARD OF)
ADMINISTRATION
BOARD OF REGENTS BUILDING, THE GATEWAY
60 SOUTH 400 WEST
SALT LAKE CITY UT 84101-1284, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Harden Eyring at the above address, by phone at 801-321-7106, by FAX at 801-321-7199, or by Internet E-mail at heyring@utahsbr.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/14/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/16/2002

AUTHORIZED BY: Cecelia H. Foxley, Commissioner

**R765. Regents (Board of), Administration.
R765-605. Utah Centennial Opportunity Program for Education.
R765-605-1. Purpose.**

To provide Board of Regents ("the Board") policy and procedures for implementing the Utah Centennial Opportunity Program for Education ("UCOPE," or "program"), UCA 53B-13a, enacted in H.B. 64 by the 1996 General Session of the Utah Legislature, as amended in 1997 and 1998.

R765-605-2. References.

- 2.1. Utah Code. Title 53B, Utah System of Higher Education, Chapter 8, Section 102.
- 2.2. Utah Code. Title 53B, Utah System of Higher Education, Chapter 13a.
- 2.3. State Board of Regents Policy R512, Determination of Resident Status.

R765-605-3. Effective Date.

These policies and procedures are effective July 2, 1998.

R765-605-4. Policy.

4.1. Program Description - UCOPE is a State supplement to increasingly inadequate grant and work assistance from Federal Government student financial aid programs. In UCA 53B-13a-103(1), the Legislature finds "that the general welfare and well-being of the state are directly related to the educational levels and skills of the citizens of the state, and that limited financial aid for students with demonstrated financial need to help finance costs of attendance at Utah postsecondary institutions is a necessary component for ensuring access to postsecondary education and training as the state enters its second century of statehood". Program funds may be used for either grants or work-study awards to students with demonstrated financial need, with no more than 3.0% of funds allocated to an eligible institution permitted to be used for administrative costs. These are the only purposes for which program funds may be used.

4.2. Award Year - The award year for UCOPE is the twelve-month period designated by an eligible institution, coinciding

approximately with the state fiscal year beginning July 1 and ending June 30. An institution may choose to have its Summer enrollment period as either the first or the final enrollment period of the award year for UCOPE purposes.

4.3. Institutions Eligible to Participate - Eligible institutions include the nine institutions of the Utah System of Higher Education, the five Utah Applied Technology Centers, and a Utah private nonprofit postsecondary institution which is accredited by a regional accrediting organization recognized by the Board. These are the only institutions eligible to participate. For purposes of this section, the Board recognizes the Northwest Association of Schools and Colleges. Utah private nonprofit postsecondary institutions accredited by the Northwest Association of Schools and Colleges are Brigham Young University, Westminster College and LDS Business College.

4.4. Students Eligible to Participate - To be eligible for grant or work-study assistance from UCOPE funds, a student must:

4.4.1. Be a resident student of the State of Utah under UCA 53B-8-102 and Board Policy R512. For purposes of this section, in addition to the qualification methods set forth in Policy R512, an institution may recognize a student as a resident student of the State of Utah if the student graduated from a Utah high school within 12 months of enrolling in the institution.

4.4.2. Be unconditionally admitted and currently enrolled in an eligible institution on at least a half-time basis as defined in Federal regulations applicable to Title IV of the Higher Education Act, in a post-high school program of at least nine months duration, leading to an Associate or Bachelor's degree, or to a diploma or certificate in an applied technology or other occupational specialty. This does not include unmatriculated students or students enrolled in postbaccalaureate programs or in remedial or developmental programs to prepare for admittance to a degree, diploma, or occupational certificate program.

4.4.3. Be maintaining satisfactory progress, as defined by the institution, toward the degree, diploma, or certificate objective in which enrolled.

4.4.4. Meet all requirements of general eligibility for Federal Higher Education Act Part IV Student Financial Aid Programs, as defined in applicable U. S. Department of Education Regulations and the current edition of the Department of Education Student Aid Handbook.

4.4.5. Have a demonstrated need for financial assistance based on the defined Cost of Attendance for the applicable student category at the institution and the expected family contribution as determined by the Federal need analysis process for Higher Education Act Title IV student financial assistance programs.

4.5. Program Administrator - The program administrator for UCOPE is the Associate Commissioner for Student Financial Aid, or a person designated in a formal delegation of authority by the Associate Commissioner, under executive direction of the Commissioner of Higher Education.

4.6. Determination of Funds Available for The Program - Funds available for UCOPE allotments to institutions may come from specifically earmarked state appropriations, from the statewide student financial aid line item appropriation to the Board, or from other sources such as private contributions. Amounts available for allotment each year are determined as follows:

4.6.1. Consistent with the original purposes of the Statewide Student Financial Aid line item appropriation to the Board, funds appropriated in the line item are applied in the following priority order:

4.6.1.1. First priority is given to matching funds for Utah System of Higher Education institutional awards from the Federal Government

for campus-based Federal Perkins Loan Program capital contributions, Federal Supplemental Educational Opportunities Grant Program funds, and partial matching for the Federal College Work Study Program.

4.6.1.2. Second priority is given to providing the required state match for allocations of State Student Incentive Grant Program funds to the State of Utah.

4.6.1.3. All remaining funds are used for UCOPE.

4.6.2. All funds appropriated by specific legislation, or in a specific line item for UCOPE, and any funds from other sources contributed for UCOPE, are added together with funds available for UCOPE pursuant to subsection ~~[605-9-1]~~4.6.1, to determine the total amount available for the program.

4.7. Allotment of Program Funds To Institutions.

4.7.1. The chief executive officer or chief student services officer of an eligible institution wishing to participate in UCOPE is required to submit to the program administrator a letter of intent to participate by the 15th of May preceding the beginning of the fiscal year (July 1 through June 30), and to include in the letter of intent a certification, subject to audit, of: (a) the total dollar amount of Federal Pell Grant funds awarded in the most recent completed award year to all students at the institution; and (b) the total dollar amount of Pell Grant funds awarded specifically to students at the institution who were resident students of the state of Utah under UCA 53B-8-102 and Board Policy R512.

4.7.2. Failure to submit its letter of intent with the required Pell Grant information by the specified date constitutes an automatic decision by an eligible institution not to participate in the program for the specific fiscal year.

4.7.3. An eligible institution which submits a qualifying letter of intent by the specified date for a specific fiscal year is a participating institution for that fiscal year.

4.7.4. Allotment of program funds to participating institutions is in the same proportion as the amount of Federal Pell Grant funds received by each participating institution for resident undergraduate students bears to the total of such funds received for such students in the most recently completed award year by all participating institutions.

4.7.5. The program administrator sends official notification of its allotment, together with a program participation agreement, and blank copies of the format for institutional UCOPE reports to be submitted within 30 days of the end of the applicable fiscal year, to the chief executive officer of each participating institution, by the 20th of May preceding the fiscal year.

4.8. Annual Institutional Participation Agreements - To receive UCOPE funds for an award year, a participating institution is required to submit a participation agreement, signed by the chief executive officer, accepting the funds and agreeing to the following terms and conditions:

4.8.1. Use of Program Funds Received by the Institution

4.8.1.1. The institution may at its discretion place up to, but in no case more than, 3.0% of the total amount of program funds allotted to it for the award year in a budget for student financial aid administrative expenses of the institution, and will expend all funds so budgeted before the end of the state fiscal year for which allotted.

4.8.1.2(a). For the 1996-97 award year and award years ~~after 1999-2000~~2000-01 and 2001-02, if the institution's allotment for the fiscal year is \$100,000 or more, the institution will place at least 30% of the total amount of program funds allotted to it for the award year in a budget to be used only for payment of work-study stipends to eligible students, for employment during the award year either in jobs provided under Federal Work-Study Program (FWSP) regulations or in jobs provided in accordance with UCOPE Work-Study Program (UWSP)

policies (Section 4.9 herein). For award years ~~[1996-97]~~1997-98 through 1999-2000, if the institution's allotment for the fiscal year is \$50,000 or more, the institution will place at least 50% of the total amount of program funds allotted to it in a budget to be used only for payment of work-study stipends to eligible students, for employment during the award year either in jobs provided under FWSP regulations or in jobs provided in accordance with Section ~~[605-12]~~4.9.

4.8.1.2(b). For any award year, the institution may, at its option ~~use all of its allotted UCOPE funds for FWSP or UCOPE work study awards~~, place all or any portion of its allotted UCOPE funds in a budget to be used only for payment of work-study stipends to eligible students, for employment during the award year either in jobs provided under Federal Work-Study Program (FWSP) regulations or in jobs provided in accordance with UCOPE Work-Study Program (UWSP) policies (Section 4.0 herein).

~~[4.8.2.1(e)]~~4.8.1.2(c). Work-study payments from the institution's UCOPE work-study budget, for jobs under either FWSP regulations or UWSP policies, will be counted as UCOPE awards for purposes of subsection 4.8.2.3.

4.8.1.3. All work- study jobs provided using UCOPE funds from the budget pursuant to this subsection, including those established under FWSP regulations, will be identified to the recipient as UCOPE work-study awards. No portion of the institution's UCOPE allotment may be used as institutional match for Federal Work-Study Program allocations.

4.8.1.4. The institution will place the total remainder of program funds allotted to it for the award year, after amounts budgeted pursuant to subsections ~~[4.1.1]~~4.8.1.1 and ~~[4.1.2]~~4.8.1.2, in a budget to be used only for payment of UCOPE grants to eligible students during and for periods of enrollment within the award year. Grants awarded from this budget will be identified to the recipient as Utah Centennial Opportunity Program Grants.

4.8.1.5. The institution may carry forward or carry back from one fiscal year to another up to 10% of the amount of its UCOPE allocation for the fiscal year, or a larger percentage if approved in advance by the UCOPE program administrator, except for any portion budgeted for administrative expenses pursuant to Section 4.8.1.1.

4.8.2. Determination of Awards to Eligible Students

4.8.2.1. Student Cost of Attendance budgets will be established by the institution, in accordance with Federal regulations applicable to student financial aid programs under Title IV of the Higher Education Act as amended, for specific student categories authorized in the Federal regulations, and providing for the total of costs payable to the institution plus other direct educational expenses, transportation and living expenses.

4.8.2.2. UCOPE work-study or grant amounts will be awarded based on financial aid information and cost of attendance budgets at the time the awards are determined, with first priority given to eligible students who qualify for Federal Pell Grant assistance.

4.8.2.3. The total amount of any UCOPE grant award to an eligible student in an award year will not exceed \$5,000, and the minimum UCOPE grant and/or work-study award to an eligible student will be \$300, except that:

4.8.2.3(a). the minimum amount may be the amount of funds remaining in the institution's allotment for the award year in the case of the last eligible student receiving a UCOPE grant award for the year; and

4.8.2.3(b). An eligible student whose period of enrollment is less than the normally-expected period of enrollment within the award year (such as two semesters, three quarters, nine months, or 900 clock hours) will be awarded a minimum or maximum grant amount in proportion to

the portion of the normally-expected period of enrollment represented by the quarter(s), semester(s) or other defined term for which the student is enrolled.

4.8.2.4. UCOPE Grants and work-study stipends will be awarded and packaged on an annual award year basis. Grants will be paid one quarter or semester at a time (or in thirds, if applicable to some other enrollment basis such as total months or total clock hours), contingent upon the student's maintaining satisfactory progress as defined by the institution in published policies or rules. Work-study wages will be paid regularly as earned, provided the student is continuing to make satisfactory progress.

4.8.2.5. All awards under the program will be made without regard to an applicant's race, creed, color, religion, ancestry, or age.

4.8.2.6. Students receiving financial aid under the program will be required to agree in writing to use the funds received for expenses covered in the student's cost of attendance budget.

4.8.2.6(a). The student's signature on the Free Application for Federal Student Aid satisfies this requirement.

4.8.2.6(b). If the institution determines, after opportunity for a hearing on appeal according to established institutional procedures, that a student used UCOPE grant or work-study funds for other purposes, the institution will disqualify the student from UCOPE eligibility beginning with the quarter, semester, or other defined enrollment period after the one in which the determination is made.

4.8.2.7. In no case will the institution initially award program grants or work-study stipends or both in amounts which, with Federal Stafford, Ford, and/or Perkins Loans and other financial aid from any source, both need and merit-based, and with expected family contributions, exceed the cost of attendance for the student at the institution for the award year.

4.8.2.8. If, after the student's aid has been packaged and awarded, the student later receives other financial assistance (for example, merit or program-based scholarship aid) or the student's cost of attendance budget changes, resulting in a later overaward of more than \$500, the institution will appropriately reduce the amount of financial aid disbursed to the student so that the total does not exceed the cost of attendance.

4.8.3. Unit-Record Information - The institution agrees to cooperate with the program administrator and the Commissioner of Higher Education in development of a unit-record data base on student financial aid and related demographic information, to be used for: (a) research into the effects of student financial aid on students' access to and participation in postsecondary education and training; and (b) planning and modifying the design of the program.

4.8.4. Notification and Reports - The institution will inform the program administrator immediately if it determines it will not be able to utilize all program funds allotted to it for an award year, and will submit an annual report within 30 days after completion of the award year, providing information on individual awards and such other program-relevant information as the board may reasonably require.

4.8.5. Records Retention and Cooperation in Program Reviews - The institution will cooperate with the program administrator in providing records and information requested for any scheduled audits or program reviews, and will maintain records substantiating its compliance with all terms of the participation agreement for three years after the end of the award year, or until a program review has been completed and any exceptions raised in the review have been resolved, whichever occurs first. If at the end of the three year retention period, an audit or program review exception is pending resolution, the institution will retain records for the award year involved until the exception has been resolved.

4.8.6. Dissemination of Employment Opportunity Information - The institution will cooperate with the program administrator in disseminating to its students periodic information provided by the board, regarding employment opportunities determined from marketplace surveys.

4.9. UCOPE Work-Study Program Guidelines - If an institution elects to utilize its UCOPE Work-Study funds for the Utah Work-Study Program (UWSP) instead of in accordance with Federal Work-Study (FWSP) regulations, the following guidelines apply.

4.9.1. The institution may establish designated UWSP institutional jobs on campus or in other institutional operating sites, and administer such jobs in accordance with the following conditions.

4.9.1.1. The job must be supplemental to, and not displace, any regularly-established job held by a greater-than-half-time institutional employee in the three months immediately prior to establishment of the UWSP institutional job.

4.9.1.2. The hourly wage for the UWSP institutional job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the institution in equivalent positions in the institution's personnel system, unless the hourly wage of equivalent positions is less than the current Federal minimum wage.

4.9.1.3. The institution may pay up to one hundred percent of the hourly wage for the institutional job from its UCOPE work-study budget established pursuant to subsection 4.9.1, provided the total wages paid to a student for the job from UCOPE and any other institutional funds do not exceed the amount of the award to the student for the award year.

4.9.2. The institution may establish designated UWSP school assistant jobs for volunteer tutors, mentors, or teacher assistants, to work with educationally disadvantaged and high risk school pupils, by contract with individual schools or school districts, and administer such jobs in accordance with the following conditions.

4.9.2.1. The hourly wage for the UWSP school assistant job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the school or school district in equivalent positions in its personnel system, unless the hourly wage of equivalent positions is less than the current Federal minimum wage.

4.9.2.2. The institution may pay up to one hundred percent of the hourly wage for the job from its UCOPE work-study budget established pursuant to subsection 4.9.2, provided the total wages paid to a student for the job from any source do not exceed the amount of the award to the student for the award year.

4.9.3. The institution may establish designated UWSP community service jobs with volunteer community service organizations certified by the program administrator on advice of the Utah Commission on Volunteers, and administer such jobs in accordance with the following conditions.

4.9.3.1. The hourly wage for the UWSP community service job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the organization in equivalent positions in its personnel system, unless the hourly wage of equivalent positions is less than the current Federal minimum wage.

4.9.3.2. The institution may pay up to one hundred percent of the hourly wage for the job from its UCOPE work-study budget established pursuant to subsection 4.9.3, provided the total wages paid to a student for the position from any source do not exceed the amount of the award to the student for the award year.

4.9.4. The institution may establish designated UWSP matching jobs by contract with government agencies, private businesses, or non-

profit corporations, and administer such jobs in accordance with the following conditions.

4.9.4.1. The matching job may not involve any religious or partisan political activities, or be with an organization whose primary purpose is religious or political.

4.9.4.2. The matching job must be supplemental to, and not displace, any regularly-established job held by a greater-than-half-time employee in the government agency, private business, or non-profit corporation in the three months immediately prior to establishment of the UWSP matching job.

4.9.4.3. The hourly wage for the UWSP matching job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the organization in equivalent positions in its personnel system, unless the hourly wage of equivalent positions is less than the current Federal minimum wage.

4.9.4.4. The institution may pay up to fifty percent of the hourly wage for the job from its UCOPE work-study budget established pursuant to subsection 4.9.4, provided the total wages (including the employer-paid portion) paid to the student do not exceed the amount of the award to the student for the award year.

4.9.5. Institutions are strongly encouraged to place students, when possible, in UWSP jobs which have a relationship to the student's field of study or training.

4.9.6. If an institution employs students in work-study jobs or other institutional jobs cumulatively over time to a point at which the institution is required to pay employee benefits other than the direct job wages for a UCOPE-funded work-study job, the institution is required to pay the costs of any such required employee benefits from institutional funds other than UCOPE-allotted funds.

KEY: financial aid, higher education

[June 15, 2000]2002

53B-8-102

53B-13a



Regents (Board Of), Administration
R765-608
Utah Engineering and Computer
Science Loan Forgiveness Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25063

FILED: 07/01/2002, 13:06

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Statutory references are corrected. The substantive amendment allows excellent student candidates registered on a less than full-time basis to participate in the program.

SUMMARY OF THE RULE OR CHANGE: The substantive amendments modifies the definition of Eligible Student in Subsection R765-608-4(4.4.3) from enrolled on a "full-time" basis to "at least a half-time" basis.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53B-6-105.9

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This changes the pool of students eligible for the program, but does not impact the state budget.
 ❖ LOCAL GOVERNMENTS: Local governments do not fund or receive funding from this program.
 ❖ OTHER PERSONS: The pool of students eligible to participate in this program will be increased. This could impact the amount of aid any given student might receive. Presumably, with more students eligible for these funds, more students would seek to benefit from this program and all students would receive proportionately less aid. However, if the legislature fully funded the program, then the aid to each student recipient could remain the same, or even increase. Because of the interplay of these many factors, it is impossible to predict the impact of these changes on any given student recipient.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The pool of students eligible to participate in this program will be increased. This could impact the amount of aid any given student might receive. Presumably, with more students eligible for these funds, more students would seek to benefit from this program and all students would receive proportionately less aid. However, if the legislature fully funded the program, then the aid to each student recipient could remain the same, or even increase. Because of the interplay of these many factors, it is impossible to predict the impact of these changes on any given student recipient.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule impacts students and institutions of higher education. No businesses have any direct involvement with this program.

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

REGENTS (BOARD OF)
 ADMINISTRATION
 BOARD OF REGENTS BUILDING, THE GATEWAY
 60 SOUTH 400 WEST
 SALT LAKE CITY UT 84101-1284, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Harden Eyring at the above address, by phone at 801-321-7106, by FAX at 801-321-7199, or by Internet E-mail at heyring@utahsbr.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/14/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/16/2002

AUTHORIZED BY: Chalmers Gail Norris, Associate Commissioner for Student Financial Aid

R765. Regents (Board of), Administration.

R765-608. Utah Engineering and Computer Science Loan Forgiveness Program.

R765-608-1. Purpose.

To provide Utah Higher Education Assistance Authority ("UHEAA") policy and procedures for implementing the Utah Engineering and Computer Science Loan Forgiveness Program ("UECLP" or "program"), UCA 53B-6, Section ~~[405-7]~~105.9, enacted in S.B. 61 by the 2001 General Session of the Utah Legislature.

R765-608-2. References.

- 2.1. Utah Code. Title 53B, Utah System of Higher Education, Chapter 6, Section ~~[405-7]~~105.9.
- 2.2. State Board of Regents Policy R610, Board of Directors of the Utah Higher Education Assistance Authority

R765-608-3. Effective Date.

These policies and procedures are effective September 1, 2001.

R765-608-4. Policy.

4.1. Program Description - UECLP is a student loan forgiveness program authorized as part of the higher education Engineering and Computer Science Initiative established with an effective date of July 1, 2001. UCA ~~[53B, Section 405-7]~~53B-6-105.9 provides for establishment of the program "to recruit and train engineering, computer science, and related technology students to assist in providing for and advancing the intellectual and economic welfare of the state," and authorizes the State Board of Regents to provide by rule for the overall administration of the program, consistent with the general student loan provisions in Title 53B and policy guidelines contained in the Section.

4.2. Program Administration - The Board of Regents has delegated to the UHEAA Board of Directors the authority to govern UECLP on behalf of the Board of Regents. The program is administered by the Associate Commissioner for Student Financial Aid as Executive Director of UHEAA, reporting to the Commissioner of Higher Education.

4.3. Program Design - The program utilizes UHEAA-guaranteed Federal Family Education Loan Program (FFELP) Stafford Student Loans and Federal Perkins Student Loans as the vehicle for providing UECLP loan forgiveness. A student enrolled at a Qualifying Institution in a Qualifying Program applies to UHEAA, with an endorsement from the dean of the school or college in which enrolled, for a Certificate for Student Loan Forgiveness which guarantees that upon completion of the requirements for loan forgiveness the Recipient will receive a direct credit for reduction of the outstanding principal balance(s) of the Recipient's outstanding Stafford or Perkins Student Loan(s). The student applies for and receives the Stafford and/or Perkins Student Loans through regular application and award procedures. Upon completion of the Qualifying Program, and Qualifying Employment, the Recipient submits an Application for Student Loan Forgiveness to UHEAA, UHEAA verifies the Recipient's qualification and the loan forgiveness amount for which the Recipient qualifies, and promptly processes the payment of outstanding principal on the Recipient's student loan(s). If the remaining principal balance on the Recipient's student loans is less than the forgiveness amount for which the Recipient qualifies, UHEAA will pay any amount above the outstanding balance directly to the Recipient, up to the amount of Stafford or Perkins Student Loan principal actually borrowed by the Recipient while enrolled in the Qualifying Program. The loan forgiveness amount for which the Recipient qualifies will include the

amount of Tuition and Fees, as defined in section 4.4.9, which is applicable to the academic year for which the Application for Student Loan Forgiveness is submitted, plus the portion of the Recipient's loan interest accrued or paid which is applicable to the principal amount to be paid on the Recipient's behalf.

4.4. Definitions -

4.4.1. Qualifying Institution - A college or university of the Utah System of Higher Education (USHE) which offers one or more Qualifying Programs.

4.4.2. Qualifying Program - An accredited engineering, computer science, or related technology baccalaureate degree program.

4.4.2.1. Related technology baccalaureate degree programs shall be limited to those certified by the Commissioner of Higher Education, in accordance with such criteria as may be established pursuant to UCA ~~[53B-6-105]~~ 53B-6-105.9.

4.4.3. Eligible Student - A student who is enrolled on ~~[a full-time]~~ at least a half-time basis in a Qualifying Institution in a Qualifying Program, in good standing, and maintaining satisfactory academic progress as defined by the institution.

4.4.4. Recipient - A person who applies for and receives a UECLP Certificate for Student Loan Forgiveness from UHEAA.

4.4.5. Certificate for Student Loan Forgiveness - A certificate issued by UHEAA to an Eligible Student, which guarantees forgiveness of student loan principal plus related loan interest paid by the Recipient, up to the amount of Tuition and Fees paid for a specified number of years of enrollment in a Qualifying Program for up to a specified number of years of Qualifying Employment.

4.4.6. Stafford Student Loan - A FFELP Stafford student loan, either subsidized or unsubsidized, guaranteed by UHEAA.

4.4.6.1. A subsidized Stafford Student Loan is certified by the student's institution on the basis of financial need, and qualifies for payment of interest by the U.S. Secretary of Education on the student's behalf while the student is enrolled at least half-time and during a six-month grace period after the student graduates or ceases to be enrolled at least half-time.

4.4.6.2. An unsubsidized Stafford Student Loan is certified by the student's institution either as needed in addition to the full subsidized loan amount, or for a student who does not qualify on the basis of financial need. The recipient of an unsubsidized Stafford Student Loan is responsible for payment of interest accruing from the date of disbursement of the loan, but may choose to have the interest deferred until the loan enters repayment (at the end of the grace period), at which time the interest is capitalized and added to the outstanding principal. The interest on an unsubsidized Stafford Student Loan is at the same favorable rates as determined annually according to statute for a subsidized Stafford Student Loan.

4.4.6.3. A student is required to file a Free Application for Federal Student Aid (FAFSA) to establish eligibility for either a subsidized or an unsubsidized Stafford Student Loan, but is entitled without limitation to receive the loan, up to statutorily-specified loan amounts, if eligible.

4.4.7. Perkins Student Loan - A Federal Perkins student loan awarded by the student's institution. Availability of Perkins Student Loans is limited, based on available funds, but a Perkins Student Loan may carry a more favorable interest rate than a Stafford Student Loan. Interest is not charged on a Perkins Student Loan while the borrower is enrolled at least half time and during the applicable grace period thereafter. A student is required to file a FAFSA to establish eligibility for a Perkins Student Loan, but might not receive the loan even if eligible, due to limited availability.

4.4.8. Year of Qualifying Employment - Full-time employment within Utah, for a full 12-month period, in a position requiring the baccalaureate degree, in engineering or in the field of computer science or in a related technology field. Provided, however, that, if a Recipient's Qualifying Employment is as a public school teacher or USHE faculty member, the annual school year or academic year contract length shall qualify as a Year of Qualifying Employment.

4.4.8.1. For purposes of this definition, employment in the fields of engineering or computer science or in a related technology field must reasonably be demonstrated to utilize skills and knowledge required for an applicable Qualifying Program.

4.4.9. Tuition and Fees - Tuition and general fees applicable to the Qualifying Program, for the institution in which the recipient is enrolled, for a full-time-equivalent (FTE) student, as defined in annual tuition and fee schedules approved by the State Board of Regents.

4.5. Application for a Certificate for Student Loan Forgiveness - An Eligible Student may apply for a Certificate for Student Loan Forgiveness at any time during an academic year in which enrolled in a Qualifying Program. The application may be for the year in which currently enrolled and subsequent years, except that it may not include years prior to the academic year during which the application is submitted and the total number of years covered by the application may not exceed five.

4.5.1. The application shall include a declaration of intent to complete the Qualified Program in which enrolled, or an equivalent Qualifying Program, and to work within Utah in Qualifying Employment for a period of four years after graduation.

4.6. Application for Student Loan Forgiveness - A Recipient may apply for forgiveness of the amount of one year of Tuition and Fees paid, as a reduction in outstanding loan principal or as a direct payment as provided for in 4.3, after each completed Year of Qualifying Employment covered by the Certificate for Loan Forgiveness, subject to the following limitation:

4.6.1. The Certificate for Student Loan Forgiveness shall provide that its guarantee, and the Recipient's eligibility to submit an Application for Student Loan Forgiveness, shall expire at the end of the 72nd month (six years) after the Recipient's date of graduation with the baccalaureate degree. Provided, however, that a period of full-time enrollment in a graduate degree program related to the Recipient's Qualifying Program shall not be counted as part of the 72 months following the Recipient's graduation with the baccalaureate degree.

4.7. Eligibility for UHEAA Borrower Benefits - Regardless of whether or not the Recipient qualifies for and receives forgiveness of any part of the principal on a Stafford Student Loan, the Recipient will remain eligible for all forbearances, deferments, and other statutory privileges under the FFELP, and also shall remain eligible for all applicable principal reductions and interest rate reductions under UHEAA's borrower benefit programs. A Recipient who does qualify for and receive forgiveness of principal on a Stafford Student Loan under UECLP also shall remain eligible for all applicable principal reductions and interest rate reductions under UHEAA's borrower benefit programs.

4.8. Limited Availability and Allocation Principles - Funding for UECLP is dependent on annual legislative appropriations, and the ability to underwrite Certificates for Student Loan Forgiveness is limited. The Program Administrator shall establish an application and award calendar annually after the amount available for new awards is determined. Selection criteria established as part of the annual calendar shall include an initial tentative allocation by Qualifying Institutions proportionate to the number of engineering and computer science baccalaureate degrees awarded by each institution in the most recent

academic year for which information is available, except that a minimum amount of \$10,000 or five percent of the amount available, whichever is the lesser, shall be established for each Qualifying Institution. The President of each Qualifying Institution electing to participate in the program shall designate an individual to administer the program for the institution, and an alternate to administer the program in the absence of the designated administrator. Each institution shall establish criteria for the selection of nominees each academic year, in priority order from persons submitting an Application for Certificate for Student Loan forgiveness, and provision for an independent internal appeal of adverse decisions by the institution's program administrator. The institution's program administrator shall submit a copy of its selection criteria and appeal procedure for acceptance by UHEAA. Selection of Recipients from applicants certified by a Qualifying Institution shall take into account the priority order of nominations from the institution, the institution's allocation for awards from available funds, and reasonable actuarial projections regarding the percentage of recipients of certificates who will qualify for and receive the payments of principal and interest guaranteed by certificates awarded.

KEY: higher education, student loans[~~z~~]
~~[December 4, 2001]~~2002
 53B-6



Regents (Board Of), Administration **R765-685** Utah Education Savings Plan Trust

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 25064
 FILED: 07/01/2002, 14:50

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To provide technical amendments to Subsections R765-685-6(6.3), R765-685-8(8.2), and R765-685-10(10.3).

SUMMARY OF THE RULE OR CHANGE: The change in Subsection R765-685-6(6.3) conforms the policy to a recent IRS clarification that the maximum allowable investment can include three years of graduate school costs. The change in Subsection R765-685-8(8.2) conforms the policy to the recently announced IRS interpretation that it will now assess an earnings tax for nonqualified withdrawals. The change in Subsection R765-685-10(10.3) clarifies that Utah Education Savings Plan (UESP) will not automatically refund account balances to the participant if distributions have not begun in a timely manner. The participant has the option to transfer the agreement to another family member account or substitute a new beneficiary.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 53B, Chapter 8a

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The Savings Plan does not involve state funds. Federal earnings taxes on withdrawals could impact the collection of state income taxes. There is no way to estimate the aggregate costs or increased revenues.
- ❖ LOCAL GOVERNMENTS: Local governments are not involved in the savings plan program.
- ❖ OTHER PERSONS: Education savings plan participants, family members, and beneficiaries may be affected by these changes. The change in Subsection R765-685-6(6.3) increases the maximum allowable investment in order to provide funding for three years of graduate school costs. This could allow persons planning such training to benefit from additional investment savings offered by the plan. The change in Subsection R765-685-8(8.2) provides for the IRS to assess an earnings tax for nonqualified withdrawals. This could result in additional costs to such individuals who make nonqualified withdrawals from their education investment plans. The change in Subsection R765-685-10(10.3) clarifies that UESP will not automatically refund account balances to the participant if distributions have not begun in a timely manner. However, because the participant has the option to transfer the agreement to another family member account or substitute a new beneficiary, this should not have any significant adverse effect on the participants who fail to use their funds in a timely manner.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Education savings plan participants, family members, and beneficiaries may be affected by these changes. The change in Subsection R765-685-6(6.3) increases the maximum allowable investment in order to provide funding for three years of graduate school costs. This could allow persons planning such training to benefit from additional investment savings offered by the plan.

The change in Subsection R765-685-8(8.2) provides for the IRS to assess an earnings tax for nonqualified withdrawals. This could result in additional costs to such individuals who make nonqualified withdrawals from their education investment plans. The change in Subsection R765-685-10(10.3) clarifies that UESP will not automatically refund account balances to the participant if distributions have not begun in a timely manner. However, because the participant has the option to transfer the agreement to another family member account or substitute a new beneficiary, this should not have any significant adverse effect on the participants who fail to use their funds in a timely manner.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Utah Education Savings Plan Trust involves families, students, and higher education institutions and does not impact businesses.

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

REGENTS (BOARD OF)
 ADMINISTRATION
 BOARD OF REGENTS BUILDING, THE GATEWAY
 60 SOUTH 400 WEST
 SALT LAKE CITY UT 84101-1284, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Harden Eyring at the above address, by phone at 801-321-7106, by FAX at 801-321-7199, or by Internet E-mail at heyering@utahsbr.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/14/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/16/2002

AUTHORIZED BY: Chalmers Gail Norris, Associate Commissioner for Student Financial Aid

R765. Regents (Board of), Administration.**R765-685. Utah Educational Savings Plan Trust.****R765-685-1. Purpose.**

To provide rules for the administration and operation of the Utah Educational Savings Plan Trust established by Title 53B, Chapter 8a, of the Utah Code Annotated 1953.

R765-685-2. References.

- 2.1. Title 53B, Chapter 8a, Utah Code Annotated 1953
- 2.2. Title 67, Chapter 16, Utah Code Annotated 1953
- 2.3. Utah Administrative Code, R614-2. Investment of Funds of Member Institutions of the State System of Higher Education.

R765-685-3. Definitions.

Many terms used in this rule are defined in Section 53B-8a-102. In addition, the following terms are defined by this rule.

3.1. The term "academic period" shall mean one semester or one quarter or an equivalent period for a vocational technical institution.

3.2. The word "account" shall denote the account in the program fund established and maintained under the trust for a beneficiary.

3.3. The term "account balance" shall mean the fair market value of an account as of the accounting date.

3.4. The term "accounting date" shall mean the date, not later than the last business day of each quarter as determined by the program administrator.

3.5. The term "administrative fee or charge" shall mean a fee charged by the trust authorized by 53B-8a-103(k), consisting of the following: (i) an enrollment fee of up to \$75 for initial enrollment in the trust charged to participants selecting investment options 2, 3, or 4 (but not charged to participants selecting option 1), which may be waived if the participant selects direct deposit or annual payment of contributions; (ii) an annual account maintenance fee payable to the administrative fund, deducted from the account assets held under the participation agreements of participants selecting investment options 2, 3, or 4 (but not deducted from the account assets of participants selecting option 1), not to exceed \$50 annually; (iii) a daily charge deducted from the assets of participants selecting investment options 2, 3, or 4 in the program fund at a rate equivalent to an annual effective rate of not more than 0.50% ,no more than 0.25% of which shall be payable to the administrative fund, and no more than 0.25% of which shall be payable to the investment advisor for the trust; or (iv) the fee charged by the trust on cancellation specified in Section 8.2.2. and required by federal law.

3.6. The term "dependent person" shall mean a person who is unable to meet all of the criteria listed in subsection 3.8 of this rule.

3.7. The term "domicile" shall mean a person's true, fixed and permanent home. It is the place where the person intends to remain, and to which the person expects to return without intending to establish a new domicile elsewhere.

3.8. The term "independent person" shall mean a person who meets all of the following criteria. An independent person is one:

3.8.1. whose parent has not claimed such person as a dependent on federal or state income tax returns for the tax year preceding the date of a request to establish a vested participation agreement;

3.8.2. who demonstrates no financial dependence upon parent(s); and

3.8.3. whose parents' income is not taken into account by any private or governmental agency furnishing educational financial assistance to the person, including scholarships, loans, and other assistance.

3.9. "Investment options" shall mean the four investment options available for selection by a participant at the time of enrollment. Investment risk under the four options ranges from conservative to most aggressive. There are no guarantees regarding moneys invested under any option, either as to earnings or as to return of principal. The value of each participant account depends on the performance of the investments selected by the trust. Each participant assumes the investment risks associated with the investment option selected. Once an investment option is selected, a participant may not change to another investment option unless authorized by the Internal Revenue Service or Treasury as being in compliance with Section 529 of the Internal Revenue Code. Under Option 1, the most conservative, all contributions are invested in the pooled Public Treasurer's Investment Fund (safe and short-term). Under Options 2 and 3, the account portfolio mix will be automatically adjusted according to a beneficiary's age. When the child is ten or more years away from college age, the portfolio is heavily invested in equity mutual funds for growth of capital. As a child nears college age, the portfolio gradually shifts emphasis to bond and short-term funds to potentially preserve capital that will be readily available for college expenses. Under Option 4, the most aggressive, the account portfolio will be totally invested in equity mutual funds (stocks) for potential equity growth.

3.10. "Notice to Delay Trust Benefits" shall mean the form which a participant submits to the program administrator of the trust to delay benefits under a participation agreement.

3.11. "Notice to Adjust Payments" shall mean the form which a participant submits to the program administrator of the trust to change the payment amount or payment schedule of the participation agreement.

3.12. "Request to Substitute Beneficiary" shall mean the form which a participant submits to the program administrator of the trust to request the substitution of a beneficiary.

3.13. "Notice to Terminate Agreement" shall mean the form which a participant submits to the program administrator of the trust to terminate a participation agreement under the trust.

3.14. "Notice to Use Trust Benefits" shall mean the form which a participant submits to the program administrator of the trust to notify the trust of the date benefits are to begin and level of benefits to be paid.

3.15. The term "parent" shall mean one of the following:

3.15.1. A person's father or mother; or

3.15.2. A court-appointed legal guardian. The term "parent" shall not apply if the guardianship has been established primarily for the purpose of conferring the status of resident on a person.

3.16. The word "payments" shall denote the money paid by the participant to the trust under the participation agreement.

3.17. The term "public treasurer" shall mean the Assistant Commissioner for Student Loan Finance who has the responsibility for the safekeeping and investment of all trust funds.

3.18. The term "qualified proprietary school approved by the board" shall mean a proprietary school which is fully accredited by a regional accrediting association or commission, the Accrediting Commission for Career Schools and Colleges of Technology, or the Accrediting Council for Independent Colleges and Schools, for which the student loan cohort default rate most recently published by the U.S. Department of Education is less than 20 percent, and which has not been placed on a reimbursement basis for financial aid programs by the U.S. Department of Education or under any limitation, suspension, or termination action or letter of credit requirement from the U.S. Department of Education or a guaranty agency under the Federal Family Education Loan Program.

R765-685-4. Participant Eligibility.

Purpose - Section 53B-8a-106 provides that the trust may enter into participation agreements with participants to effectuate the purposes, objectives and provisions of the trust. This rule establishes the eligibility criteria for a participant.

4.1. Participant Eligibility - A participant may be a resident of any state.

4.2. Participation Agreement - A participant shall execute a participation agreement with the program administrator that specifies the terms and conditions under which the participant shall participate in the trust.

4.3. Valid Social Security Number - A participant shall, on signing a participation agreement, provide the program administrator with his or her valid social security number.

R765-685-5. Beneficiary Eligibility.

Purpose - Section 53B-8a-106 provides that a beneficiary of a participation agreement must be designated from date of birth through age 18 for the participant to receive Utah income tax benefits. This rule establishes the eligibility criteria for a beneficiary.

5.1. Beneficiary Eligibility - A beneficiary may be a resident of any state and may be any age. However, for a participant to subtract allowable investments from federal taxable income on a Utah income tax return, on the day the participation agreement is executed, the beneficiary must be younger than 19 years of age.

5.2. Proof of Age - A participant shall, on signing a participation agreement, provide the program administrator with proof of the beneficiary's age, in the form of a birth certificate or such other form as the program administrator may require.

5.3. Valid Social Security Number - A participant shall, on signing a participation agreement, provide the program administrator a valid social security number of the beneficiary.

R765-685-6. Payments and Payment Schedules.

Purpose - Section 53B-8a-106 states that participant agreements shall require participants to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary, not to exceed an amount determined by the board and not to exceed total estimated higher education costs as determined by the board. This rule provides for implementation of this provision.

6.1. Payment Schedule - A participant must specify a schedule for making payments according to a participation agreement. Acceptable payment schedules are, 1) weekly, 2) bi-weekly, 3) monthly, 4) annually, and 5) other.

6.2. Payment - A participant must specify a payment amount to be paid according to the payment schedule chosen by the participant. For participants who select a weekly, bi-weekly or monthly payment schedule, the specified payment amount must be at least twenty-five dollars. For participants who select an annual payment schedule, the specified payment amount must be at least three hundred dollars. For participants who select other payment schedule, the specified payment amount must equate to at least three hundred dollars per year. A payment of less than twenty-five dollars shall be returned to the participant.

6.3. Maximum Payments - The total of all payments made on behalf of a beneficiary into this trust and the supplemental trust enacted in Section 53B-8b may not exceed the cost of qualified higher education expenses for ~~five~~four years of undergraduate ~~plus three years of graduate~~ enrollment at the highest cost public or private ~~Utah~~ institution authorized under the plan. Payments in excess of this maximum shall be returned to the participant. The maximum amount of investments that may be subtracted from federal taxable income under Subsection 59-10-114(2)(j) shall be \$1,200 for each individual beneficiary for the 1996 calendar year and an amount adjusted annually thereafter to reflect increases in the Consumer Price Index.

6.4. Annual Adjustments - Annual adjustments to the maximum amount of payments allowable under a participation agreement in a given calendar year shall be published by the Trust program administrator prior to the beginning of that year.

6.5. Amendments - Payment amounts and payment schedules may be adjusted by submitting to the program administrator notice to adjust payments. No administrative fee may be charged to participants for such adjustments.

R765-685-7. Substitution of Beneficiary.

Purpose - Section 53B-8a-106 provides that beneficiaries may be changed subject to the rules and regulations of the board. This rule establishes the criteria for substituting one beneficiary for another.

7.1. Substitution - A participant may substitute a beneficiary at any time prior to the date of admission of any beneficiary of a participation agreement to an institution of higher education and may transfer funds to another beneficiary account at any time. The substitute beneficiary must be eligible for participation pursuant to section 5 of this rule, and be a member of the family of the beneficiary being substituted as defined in subsection 7.1.1 of this rule.

7.1.1. Member of Family - An individual shall be considered a member of a beneficiary's family only if such individual is:

7.1.1.1. an ancestor of such beneficiary

7.1.1.2. a spouse of such beneficiary

7.1.1.3. a lineal descendant of such beneficiary, of such beneficiary's spouse, or of a parent or grandparent of such beneficiary, or

7.1.1.4. the spouse of any lineal descendant described in subsection 7.1.1.3.

7.1.1.5. For purposes of the preceding sentence, a legal adoption shall be considered as though it establishes a blood relationship between an adopted child and parent.

7.2. Request - A participant may request that a beneficiary be substituted by submitting to the program administrator a request to substitute beneficiary. The request shall accompany evidence, as specified by the program administrator, that the proposed substitute beneficiary is a member of the family of the beneficiary.

R765-685-8. Cancellation and Payment of Refunds.

Purpose - Section 53B-8a-108 provides that any participant may cancel a participation agreement at will. This rule establishes the criteria for canceling participation agreements and providing refunds.

8.1. Cancellation - A participant may at any time cancel a participation agreement, without cause, by submitting to the program administrator notice to terminate agreement.

8.2. Payment of Refund - If the participation agreement is canceled, the participant is entitled to a refund. The refund shall be mailed or otherwise sent to the participant within sixty days after receipt by the program administrator of notice to terminate the participation agreement. The amount of the refund shall be the total of all contributions made plus actual investment income on the contributions, up to the current account balance as adjusted for any market change. ~~[determined according to the following criteria-~~

~~8.2.1. If the participation agreement was in effect for less than two years the participant shall receive one hundred percent of all payments made under the participation agreement less any amount paid by the trust for educational expenses of the beneficiary. Investment income credited to the participant's account shall be forfeited.~~

~~8.2.2. If the participation agreement was in effect for two or more years the participant shall receive one hundred percent of all payments made under the participation agreement, up to the current account balance, less an administrative fee of ten percent of any investment income credited to the participant's account.]~~

8.3. Death or Disability of the Beneficiary, Receipt of a Scholarship, or Rollover Distribution - The participant is entitled to a refund of one-hundred percent of all payments made under the participation agreement plus all investment income which has been credited to the participant's account less any amount paid by the trust for educational expenses of the beneficiary upon the occurrence of, 1) death of the beneficiary, 2) permanent disability or mental incapacity of the beneficiary, 3) receipt of a scholarship (or allowance or payment described in section 135(d)(1)(B) or (C) of the Internal Revenue Code) by the designated beneficiary to the extent the amount of the distribution does not exceed the amount of the scholarship, allowance, or payment, or 4) a rollover distribution to another program or account qualifying under Section 529 of the Internal Revenue Code. Under such circumstances, no administrative fee shall be charged.

8.3.1. Before a cancellation and refund due to the death of a beneficiary is made, a participant must provide the trust a copy of the beneficiary's death certificate or other proof of death acceptable under state law.

8.3.2. Before a cancellation and refund due to the disability or mental incapacity of a beneficiary is made, a participant must provide to the trust written certification from a qualified and licensed physician that the beneficiary cannot reasonably attend school.

8.3.3. Before a cancellation and refund due to the receipt of a scholarship, allowance or payment, a participant must provide to the trust written proof of the receipt by the beneficiary of a scholarship, allowance or payment and the amount thereof.

8.4. Refunds Reported - Funds that are refunded to a participant pursuant to this section shall be reported to the appropriate taxing authorities for the tax year in which such refund is made.

R765-685-9. Vested Participation Agreement.

Purpose - Section 53B-8a-106 provides that the beneficiary of a vested participation agreement shall be considered a Utah resident for tuition purposes. This rule establishes the criteria for determining whether a participation agreement has vested.

9.1. Residency Requirement - An individual who has at any time

been a resident of the State of Utah for at least eight continuous years and was designated as a beneficiary under a participation agreement for that entire eight year period, shall be deemed to have a vested participation agreement, even if the beneficiary leaves the state prior to enrollment in an institution of higher education.

9.2. Proof of Residency - At any time following the expiration of the period of eight years of continuous residency by the beneficiary, either the participant or the beneficiary may submit to the program administrator evidence of the residency for the purpose of establishing the vested participation agreement.

9.2.1. Evidence submitted on behalf of a dependent person shall pertain to the domicile of either parent during the claimed period of residency. Evidence submitted on behalf of an independent person shall pertain to the domicile of such person during the claimed period of residency.

9.2.2. The determination of residency shall be based upon verifiable circumstances or actions. No single fact is paramount, and each situation shall be evaluated to identify those facts which are essential to the determination of domicile.

9.2.3. The following facts, although not conclusive shall have probative value in support of a claim for resident classification.

9.2.3.1. Full-time employment in Utah or transfer to an employer in contiguous area while maintaining domicile in Utah.

9.2.3.2. Filing of Utah resident income tax return for each applicable calendar year of claimed residency status.

9.2.3.3. Attendance as a full-time, nonresident student at an out-of-state institution of higher education while determined to be a resident of Utah.

9.2.3.4. Abandonment of a former domicile and establishing domicile in Utah with attendance at an institution of higher education following and only incidental to such change in domicile.

9.2.3.5. Payment of occupational taxes in Utah.

9.2.3.6. Payment of real property taxes in Utah.

9.2.3.7. Payment of intangible personal property taxes in Utah.

9.2.3.8. Ownership of real property in Utah, if the property was used as a residence during the claimed period of residency.

9.2.3.9. Long-term lease of housing during the claimed period of residency.

9.2.3.10. Utah automobile registration during the claimed period of residency.

9.2.3.11. Utah driver's license during the claimed period of residency.

9.2.3.12. Registration as a Utah voter during the claimed period of residency.

9.2.3.13. Corroborating affidavit of a non relative.

9.2.4. The determination of residency shall be based upon verifiable circumstances or actions and authenticated copies of relevant documentation. The program administrator may request additional documentation to clarify circumstances and formulate a decision that considers all relevant facts.

9.3. Non transferability - Although the participant may freely substitute beneficiaries under a participation agreement, the residency status acquired by a beneficiary of a vested participation agreement shall not be used to confer such status on a substitute beneficiary, nor shall the residency of one beneficiary be taken into account in the establishment of a vestment period of substitute beneficiary.

R765-685-10. Payment of Benefits.

Purpose - Section 53B-8a-106 provides that payment of benefits provided under participation agreements must begin not later than the first full academic quarter or semester at an institution of higher

education following the beneficiary's 22nd birthday or high school graduation, which ever is later, unless the participant notifies the program administrator to the contrary. This rule establishes the procedures for the payment of benefits.

10.1. Distribution of Benefits - For payment of benefits from the trust to begin, the participant shall submit a notice to use trust benefits.

10.2. Delay of Distribution - For payment of benefits to be delayed beyond four months after the beneficiary's 22nd birthday, the participant must submit a notice to delay trust benefits unless the beneficiary was over the age of 18 when the account was established. If no such notice is submitted, the program administrator shall refund money held by the trust on behalf of the participant according to section 8 of this rule.

10.3. Limit on Delay of Distribution - Participants may delay the distribution of trust benefits until the beneficiary's 27th birthday or for ten years from the date the account was established if the beneficiary was over the age of 18 at the date of establishment. If the participant does not submit a notice to use trust benefits on or before beneficiary's 27th birthday or ten years from the date of account establishment and the participant does not elect to roll the funds into another family member account or to substitute a beneficiary, the program administrator shall refund money held by the trust on behalf of the participant according to section 8 of this rule.

10.3.1. The program administrator may waive the age or time limit identified in subsection 10.3 of this rule if, in the judgement of the program administrator, the probability that the beneficiary will attend a higher education institution in the near future is significant.

10.4. Payout Schedule - Upon submission of a notice to use trust benefits, the participant shall specify the level of benefits to be paid. The participant may elect distribution of an allotment of the account balance, calculated by dividing the account balance by the number of academic periods in the beneficiary's program of study, or a higher amount, which shall not exceed the beneficiary's higher education costs for each academic period. The participant may adjust the level of benefits paid in any academic period by notifying the program administrator in writing.

10.5. Duration of Payout - Distribution of benefits shall begin after receipt by the program administrator of notice to use trust benefits and shall continue throughout the beneficiary's period of enrollment at an institution of higher education or until the account balance has been exhausted, whichever occurs first.

10.6. Interruption in Attendance - If following the submission of a notice to use trust benefits, the beneficiary interrupts his or her attendance at an institution of higher education, the participant shall submit a notice to delay trust benefits specifying the period for which trust benefits shall be delayed.

10.7. Unused Benefits - If the beneficiary graduates from an institution of higher education, and a balance remains in the beneficiary's account, the program administrator shall refund the balance of the payments and the earnings from the investments in the program fund remaining in the account to the participant. The program administrator shall make the payment from the program fund within sixty days from the date of the beneficiary's graduation. The refund shall be made unless the beneficiary plans to continue at a higher education institution and the participant submits a completed notice to delay benefits or notice to use trust benefits.

10.8. Refunds Reported - Funds that are refunded to a participant pursuant to this section shall be reported to the appropriate taxing authorities for the tax year in which such refund is made.

R765-685-11. Higher Education Costs.

Purpose - Section 53B-8a-101 authorizes the establishment of the Utah Educational Savings Plan Trust to encourage individuals to save for future higher education costs. This rule established the definition of higher education costs.

11.1. Definition - The term "higher education costs" shall mean charges for tuition, fees, books, supplies and equipment required for enrollment or attendance of a designated beneficiary at an institution of higher education.

11.2. Payment of Benefits - The payment of benefits pursuant to subsection 10 of this rule may be made only for higher education costs as defined in subsection 11.1.

R765-685-12. Investment Policy.

Purpose - This rule is applicable to all investments by the Utah Educational Savings Plan Trust and to Trustees for funds covered by Trust agreements.

12.1. Investment Objectives - The primary objectives, in priority order, of investment activities shall be:

12.1.1. to provide compliance with the State Money Management Act and related Rules.

12.1.2. to provide adequate liquidity levels to meet Trust obligations.

12.1.3. to provide guidelines as to the types and maturities of investments while considering: (a) the availability of funds to cover current needs; (b) maximum yields on investments of funds, and (c) minimum exposure to risk of loss.

12.1.4. All fixed income investments will be suitable to be held to maturity; however, sale prior to maturity may be necessary and warranted in some cases. The Trust's investment portfolio will not be used for speculative purposes.

12.1.5. The public treasurer will consider and meet the following objectives when investing Trust funds:

12.1.5.1. safety of principal;

12.1.5.2. need for liquidity;

12.1.5.3. yield on investments;

12.1.5.4. recognition of the different investment objectives of Program, Endowment and Administrative Funds; and

12.1.5.5. maturity of investments, so that the maturity date of the investment does not exceed the anticipated date of the expenditure of funds.

12.2. Standards of Care - Standards of care include:

12.2.1. Prudence - Selection of investments as authorized by this policy shall be made with the exercise of that degree of judgment and care, under circumstances then prevailing, which a person of prudence, discretion, and intelligence would exercise in the management of his or her own affairs, not for speculation but for investment, considering the probable safety of capital, as well as the probable benefits to be derived and the probable duration for which such investment may be made, and considering the investment objectives specified in this policy.

12.2.2. Ethics and Conflicts of Interest - Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Employees and investment officials shall disclose any personal financial or investment positions that could be related to the performance of the investment in accordance with Utah Code Annotated 67-16-1, Utah Public Officer's and Employees' Ethics Act.

12.2.3. Delegation of Authority - Authority to manage the investment program is granted to the Trust's public treasurer who is responsible for the operation of the investment program and who shall

carry out established written procedures and internal controls for the operation of the investment program consistent with this investment policy.

12.3. Safekeeping and Custody - Standards of safekeeping and custody shall include:

12.3.1. Internal Controls - The public treasurer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the Trust are protected from loss, theft or misuse. The internal control structure shall be designed to provide reasonable assurance that these objectives are met.

12.3.1.1. Accordingly, the public treasurer shall establish a process for an annual independent review as provided by the state auditor to assure compliance with policies and procedures.

12.3.2. Custody -

12.3.2.1. The public treasurer shall have custody of all securities purchased or held and all evidence of deposits and investments of all funds. All securities shall be delivered versus payment to the public treasurer or to the treasurer's safekeeping bank.

12.3.2.2. The public treasurer may deposit any of these securities with a bank or trust company to be held in safekeeping by that custodian.

12.3.2.3. The provisions of this subsection apply to any book-entry-only security the ownership records of which are maintained with a securities depository, in the Federal Book Entry system authorized by the U.S. Department of Treasury, or in the book-entry records of the issuer, as follows:

12.3.2.3.1. the direct ownership of the security by the public treasurer shall be reflected in the book-entry records and represented by a receipt, confirmation, or statement issued to the public treasurer by the custodian of the book-entry system; or

12.3.2.3.2. the ownership of the security held by the public treasurer's custodial bank or trust company shall be reflected in the book-entry records and the public treasurer's ownership shall be represented by a receipt, confirmation, or statement issued by the custodial bank or trust company.

12.3.3. All investments shall be approved by the State Treasurer.

12.4. Authorized Investments - Investment transactions may be conducted only through qualified depositories, certified dealers, or directly with the issuers of the investment securities. The remaining term to maturity of investments may not exceed the period of availability of the funds to be invested. Deposits into the Trust's Administrative Fund and Program Fund may be invested only in the following assets that meet the Trust's investment objectives and criteria and the requirements of the State Money Management Act as amended:

12.4.1. negotiable or nonnegotiable deposits of qualified depositories;

12.4.2. qualifying repurchase agreements and reverse repurchase agreements with certified dealers, permitted depositories, or qualified depositories using collateral consisting of:

12.4.2.1. Government National Mortgage Association mortgage pools;

12.4.2.2. Federal Home Loan Mortgage Corporation mortgage pools;

12.4.2.3. Federal National Mortgage Corporation mortgage pools;

12.4.2.4. Small Business Administration loan pools;

12.4.2.5. Federal Agriculture Mortgage Corporation pools; or

12.4.2.6. other deposits or investments of public funds authorized by the State Money Management Act;

12.4.3. commercial paper that is classified as "first tier" by two nationally recognized statistical rating organizations, one of which must

be Moody's Investors Service, Inc. or Standard and Poor's Corporation, which has a remaining term to maturity of 270 days or less;

12.4.4. bankers' acceptances that;

12.4.4.1. are eligible for discount at a Federal Reserve bank; and

12.4.4.2. have a remaining term to maturity of 270 days or less;

12.4.5. fixed rate negotiable deposits issued by a permitted depository that have a remaining term to maturity of 365 days or less;

12.4.6. obligations of the United States Treasury, including United States Treasury bills, United States Treasury notes, and United States Treasury bonds;

12.4.7. obligations other than mortgage pools and other mortgage derivative products issued by, or fully guaranteed as to principal and interest by, the following agencies or instrumentalities of the United States in which a market is made by a primary reporting government securities dealer:

12.4.7.1. Federal Farm Credit banks;

12.4.7.2. Federal Home Loan banks;

12.4.7.3. Federal National Mortgage Association;

12.4.7.4. Student Loan Marketing Association;

12.4.7.5. Federal Home Loan Mortgage Corporation;

12.4.7.6. Federal Agriculture Mortgage Corporation; and

12.4.7.7. Tennessee Valley Authority;

12.4.8. fixed rate corporate obligations that;

12.4.8.1. are rated "A" or higher or the equivalent of "A" or higher, by two nationally recognized statistical rating organizations one of which must be Moody's Investors Service, Inc. or Standard and Poor's Corporation;

12.4.8.2. are publicly traded; and

12.4.8.3. have a remaining term to final maturity of 365 days or less or is subject to a hard put at par value or better, within 365 days;

12.4.9. tax anticipation and general obligation bonds of the state or of any county, incorporated city or town, school district, or other political subdivision of this state, including bonds offered on a when-issued basis.

12.4.10. bonds, notes, or other evidence of indebtedness of any county, incorporated city or town, school district, or other political subdivision of the state that are payable from assessments or from revenues or earnings specifically pledged for payment of the principal and interest on these obligations.

12.4.11. State Public Treasurer's Investment Fund;

12.4.12. shares or certificates in a money market mutual fund as defined in Section 51-7-3, et.seq., of the State Money Management Act;

12.4.13. variable rate negotiable deposits that:

12.4.13.1. are issued by a qualified depositor or a permitted depository;

12.4.13.2. are repriced at least semiannually; and

12.4.13.3. have a remaining term to final maturity not to exceed two years;

12.4.14. variable rate securities that:

12.4.14.1. are rated "A" or higher or the equivalent of "A" or higher by two nationally recognized statistical rating organizations, one of which must be Moody's Investors Service, Inc. or Standard and Poor's Corporation;

12.4.14.2. are publicly traded;

12.4.14.3. are repriced at least semiannually;

12.4.14.4. have a remaining term to final maturity not to exceed two years; or are subject to a hard put at par value or better, within 365 days; and

12.4.14.5. are not mortgages, mortgage-backed securities, mortgage derivative products, or any security making unscheduled periodic principal payments other than optional redemptions.

12.4.15. Deposits into the Trust's Endowment Fund may be invested in any of the following:

12.4.15.1. any deposit or investment authorized for the Trust's Administrative Fund or Program Fund; and

12.4.15.2. investments as described and set forth in the State Money Management Council Rule 2: Investment of Funds of Member Institutions of the State System of Higher Education. (Utah Administrative Code, R614-2.)

12.5. Reporting - The public treasurer will prepare monthly and quarterly investment reports with appropriate assertions which will be submitted to the Utah State Board of Regents Student Finance Subcommittee for review and approval. The Subcommittee will determine the format and information to be reported.

R765-685-13. Earnings in Program Fund.

Purpose - Section 53B-8a-107 provides the Trust with authority to invest, via the program fund, payments made by a participant under a participation agreement. This rule establishes the terms for the payment of interest to individual participant accounts within the program fund.

13.1. Quarterly Crediting - The trust shall credit interest earnings from the program fund to individual participant accounts on a quarterly basis.

13.2. Pro-rata Share - A pro-rata share of interest earned by the program fund during a given quarter shall be credited to each participant account at the end of the quarter. The pro-rata amount posted to each individual account shall be based on the average daily balance of the individual account compared to the average daily balance of the program fund during the quarter.

13.3. Transfers to Administrative Fund - Upon approval of the board, up to .5 percentage points of interest earned annually in the program fund may be transferred to the administrative fund for administrative purposes.

13.4. Quarterly Statement - At the close of each quarter, the Trust shall provide for each participant a statement listing the beginning balance, interest earned and closing balance of the participant's account held in the program fund.

R765-685-14. Earnings in Endowment Fund.

Purpose - Section 53B-8a-107 provides that each beneficiary for whom funds are saved under a participation agreement shall receive an interest in a portion of the investment income of the endowment fund of the Trust. This rule provides for implementation of this provision.

14.1. Transfers to Administrative Fund - Upon approval of the board, up to two percentage points of interest earned annually in the endowment fund may be transferred to the administrative fund for administrative purposes.

14.2. Earmarking of Endowment Interest - A portion of the interest earned by the endowment fund that is not transferred to the administrative fund shall be earmarked for use by the beneficiary of each participation agreement.

14.3. Pro-rata Share - Each quarter, a pro-rata amount of endowment fund interest shall be earmarked to each participant account eligible under any restrictions imposed by a donor on contributions to the Endowment Fund. The pro-rata amount shall be based on the average daily balance of the eligible account held on behalf of a beneficiary in the program fund compared to the average daily balance of all eligible accounts in the entire program fund during the quarter, up

to an amount equal to .25 percent of the amount saved on behalf of the beneficiary in such account.

14.4. The earmarking of endowment interest for use by a beneficiary shall not constitute ownership of such interest on the part of any beneficiary or participant. Upon cancellation of a participation agreement, endowment interest earmarked to an account shall revert back to the endowment fund.

14.5. Reinvestment of Endowment Interest - Endowment Interest that is not either transferred to the administrative fund or earmarked for use by a beneficiary under a program agreement shall be reinvested in the endowment fund.

14.6. Quarterly Disclosure - The quarterly statement provided to each participant by the Trust shall disclose both the quarterly and cumulative amounts of endowment interest that have been earmarked for use by a beneficiary under a participation agreement.

14.7. Payment of Benefits - When payment of benefits for the beneficiary begin under a participation agreement, interest from the endowment fund that has been earmarked for use by the beneficiary shall be made available for higher education costs, and shall be disbursed with the principal and interest held on behalf of the beneficiary in the program fund according to section 10 of this rule.

R765-685-15. No Pledging of Trust Funds as Security.

15.1. Funds held by the Utah Educational Savings Plan Trust may not be used by a participant or a beneficiary under a participation agreement as security for a loan.

KEY: higher education, educational savings trust
[July 1, 2000]2002
Notice of Continuation November 30, 2001
53B-8a



Transportation, Operations, Maintenance **R918-2** Widening Pavement to Curb and Gutter

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 25053

FILED: 06/27/2002, 16:39

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule sets forth the specifications for pavement widening to curb and gutter. It was accidentally not renewed for continuance and was removed from the Utah Administrative Code. Therefore, this new rule is necessary to put it back in place.

SUMMARY OF THE RULE OR CHANGE: The rule establishes standards for the widening of highway pavements.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-2-201

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There will be no additional costs to the state budget as the costs for the projects are included in the Utah Department of Transportation's highway budget. This rule only sets out standards by which the projects will be done.
- ❖ LOCAL GOVERNMENTS: There will be no costs to local government since they are not affected by the rule.
- ❖ OTHER PERSONS: Other persons will not be affected by the rule and, thus, there will be no cost.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses.

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

TRANSPORTATION
 OPERATIONS, MAINTENANCE
 CALVIN L RAMPTON COMPLEX
 4501 S 2700 W
 SALT LAKE CITY UT 84119-5998, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at jbeadles@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/14/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: John R. Njord, Executive Director

R918. Transportation, Operations, Maintenance.
R918-2. Widening Pavement to Curb and Gutter.

R918-2-1. Length.

Each project for widening the pavement of state highways from the edge of the existing pavement to the edge of the curb and gutter must have a length of 500 continuous feet or more.

R918-2-2. Exception.

Exceptions to the minimum length may be approved on an individual basis by the region director. In the event that a continuous length of less than 500 feet is submitted for review and approval, the following factors shall be considered in deciding if the request is in the public interest:

- A. The length of curb and gutter is an extension to an already widened section that extends an existing section controlled by curb and gutter.
- B. The proposed section meets all the criteria listed in R918-2-3.
- C. The proposed section is not isolated and is a part of an existing planned widening of the street.

D. The expenditure for widening will promote an immediate public benefit other than an incremental part of an eventual widening that is not on any fixed time schedule.

E. The amount of widening is large enough to be economically feasible in the use of equipment, materials, and manpower.

R918-2-3. Criteria.

If the following criteria are met, the UDOT may authorize and pay for the widening of the pavement from the edge of the existing pavement to the edge of the curb and gutter, provided funds are available.

A. New curb and gutter will be installed by others in accordance with specifications established by the local government and approved by the UDOT. A permit issued by the UDOT prior to commencement of construction is required.

B. New curb and gutter must maintain continuity of drainage with existing or planned drainage facilities and include all necessary drop inlets, storm drains, storm drain connections, driveway approaches, handicap ramps, and any other necessary appertaining features.

C. Utility adjustment, relocation, and removal where necessary, will be required in accordance with UDOT rules.

D. If private right-of-way is required for the new curb, gutter, and sidewalk, a right-of-way of sufficient width to accommodate roadside features must be provided by others at no cost to UDOT.

E. Work performed by others within the existing right-of-way will be subject to permit fees and bonding requirements as described in Utah Department of Transportation Policy 08A6-2, Accommodation of Utilities on Highway Right-of-Way.

F. Untreated base course of a predetermined design thickness in place shall also be required of the project sponsor.

R918-2-4. Authority.

Authorization for widening projects may be granted when the criteria are met in accordance with Section 72-1-205.

KEY: drainage, highway construction

- 2002
- 72-201
- 72-1-205
- 72-1-208
- 72-1-303



Workforce Services, Employment
 Development

R986-700-702

General Provisions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 25050

FILED: 06/27/2002, 15:51

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To bring the rule into compliance with Federal regulations.

SUMMARY OF THE RULE OR CHANGE: Federal requirements provide that children who are receiving the benefits of child care must meet the citizenship and alienage requirements of the Department's rule Section R986-200-203. By eliminating Subsection R986-700-702(5), the provisions of R986-200-203 will be in effect and the Department will be in compliance with Federal regulations.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-3-310

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** This is a federally-funded program and there will be no costs or savings to the State budget.
- ❖ **LOCAL GOVERNMENTS:** This rule does not apply to local government and therefore there are no costs or savings to local government.
- ❖ **OTHER PERSONS:** There will be no costs associated with these changes to any person. It may be that there are children receiving benefits who do not meet the requirements and benefits will no longer be payable for them.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs associated with this rule change. It may be that there are children receiving benefits who do not meet the requirements and benefits will no longer be payable for them.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will have no impact on businesses.

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

**WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.**

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/19/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/20/2002

AUTHORIZED BY: Raylene G. Ireland, Executive Director

**R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-702. General Provisions.**

- (1) CC is provided to support employment.
- (2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

- (a) parents;
- (b) specified relatives; or
- (c) clients who have been awarded custody or appointed guardian of the child.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

- (a) children under the age of 13; and
- (b) children age 13 to 18 years if the child is:

(i) physically or mentally incapable of self-care as determined by a medical doctor, doctor of osteopathy or licensed or certified psychologist; and/or

- (ii) under court supervision.[]

~~—(5) The children receiving care do not need to meet the citizenship or alienage requirements of R986-200-203. The parent, guardian or specified relative does need to meet those requirements.~~

(6) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" means a child identified by the Department of Human Services, Division of Services to People with Disabilities or other entity as determined by the Department, as having a physical or mental disability requiring special child care services.

(7) The amount of CC might not cover the entire cost of care.

(8) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(9) CC can only be provided for an eligible provider and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(10) Neither the Department nor the state of Utah are liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(11) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC.

(12) Once eligibility for CC has been established, eligibility must be reviewed at least once every six months. The review is not complete until the re-certification forms are signed and returned to the local office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department will reduce or terminate CC even if the certification period has not expired.

**KEY: child care
[April 1], 2002
35A-3-310**



Notices of Changes in Proposed Rules Begin on the Following Page

NOTICES OF CHANGES IN PROPOSED RULES

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

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

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

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends August 14, 2002. At its option, the agency may hold public hearings.

From the end of the waiting period through November 12, 2002, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page.

Health, Epidemiology and Laboratory
Services, Environmental Services
R392-100
Food Service Sanitation

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 24728
Filed: 06/28/2002, 14:18

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Public input to the original proposed rule suggested the need for four substantive and one nonsubstantive revision.

SUMMARY OF THE RULE OR CHANGE: The four substantive changes to the proposed rule are: 1) removes obsolete language at Subsection R392-100-2(2)(p) that set up a special category of temporary food establishment during the Olympics; 2) adds a new Subsection R392-100-2(2)(ak) to reduce the allowable holding temperature for certain foods; 3) deletes Subsection R392-100-2(2)(bz) which would have required posting inspection results in the employee work area; and 4) amends Subsection R392-100-2(2)(cb) to delete a proposed ban on release of inspection results for 30 days. The nonsubstantive change was an incomplete reference that was corrected. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed repeal and reenact that was published in the May 1, 2002, issue of the Utah State Bulletin, on page 38. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed repeal and reenact together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-15-2, and Subsection 26-1-30(2)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The regulatory requirements to be enforced by the state health department, if asked to assist by a local health department, will not be significantly changed by any of these revisions to the proposed rule. Therefore there should not be a cost to the state budget beyond that detailed in the original filing.

❖ LOCAL GOVERNMENTS: The regulatory requirements to be enforced by local health department will not be significantly changed by any of these revisions to the proposed rule. Therefore, there should not be a cost to local government budgets beyond that detailed in the original filing.

❖ OTHER PERSONS: Lowering the allowable holding temperature and removing the requirement to post inspection results could generate a minimal cost savings for restaurants.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Lowering the allowable holding temperature and removing the requirement to post inspection results could generate a minimal cost savings for restaurants. Local government will have the

flexibility to release inspection results as they see fit. None of the changes mandate any action by an affected person and therefore there should be no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These minor changes in response to public comments will not have a fiscal impact on businesses.

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

HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES,
ENVIRONMENTAL SERVICES
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Tim Lane at the above address, by phone at 801-538-6755, by FAX at 801-538-6036, or by Internet E-mail at tlane@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/14/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: Rod Betit, Executive Director

R392. Health, Epidemiology and Laboratory Services, Environmental Services.

R392-100. Food Service Sanitation.

R392-100-1. Authority and Purpose.

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

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

R392-100-2. Incorporation by Reference.

(1) The requirements as found in the U.S. Public Health Service, Food and Drug Administration, Food Code 1999, Chapters 1 through 8 and Annex 1, are adopted and incorporated by reference, with the exclusion of Sections 3-201.17(A)(4), 4-301.12(C)(5), 4-301.12(D) and (E), 4-501.115, 4-603.16(B)(1), 4-603.16(C), 8-302.14(C)(2),(D) and (E), 8-805.40, and 8-809.20; and

(2) with the following additions or amendments:

(a) Add definition 1-201.10(B)(8.5) to read:

"(8.5) "Certified Food Safety Manager" means the same as defined under subsection 26-15a-102(2) and R392-101 Food Safety Manager Certification rule."

(b) Add definition 1-201.10(B)(10.5) to read:

"(10.5) "Code" means R392-100 Utah Food Service Sanitation Rule and related rules."

(c) Amend definition 1-201.10(B)(23) to read:

"(23) "Employee" means the permit holder, person in charge, supervisor or manager, inventory person, or person with responsibilities to serve guests, cook or prepare food, wash utensils, or who has cleaning responsibilities."

(d) Add definition 1-201.10(B)(25.5) to read:

"(25.5) "FDA" means the U.S. Food and Drug Administration."

(e) Amend definition 1-201.10(B)(30) to read:

"(30) "Food employee" means the same as "food handler" under subsection 26-15-1(1)."

(f) Amend definition 1-201.10(B)(31)(a) to read:

"(a) For the purposes of this rule, "Food Establishment" shall mean "Food Service Establishment" and refers to any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off premises and regardless of whether there is a charge for the food."

(g) Amend definition 1-201.10(B)(31)(b) to read:

"(b) "Food Establishment" includes but is not limited to:

(i) bars, bed and breakfasts, breweries, cafeterias, camps, caterers, child care facilities, coffee shops, commissaries, day cares, fairs, group residences, hospitals, hotels, motels, nursing homes, penal institutions, private clubs, restaurants, satellite sites, schools, senior citizen centers, shelters, snack bars, taverns or similar food facilities;

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location;

(iii) the area of a bakery, convenience store, delicatessen, or grocery store where food is prepared and intended for individual portion service and includes areas used for storing food used in this portion of the food establishment, warewashing, utility and waste disposal facilities; and

(iv) except as exempted in subsection 1-201.10(B)(30)(c)(v), the premises of a church, temple, and synagogue where food is prepared for the public or may include both members and the public."

(h) Amend definition 1-201.10(B)(31)(c)(iv) to read:

"(iv) A private home where food is prepared or served for private family, religious, or charitable functions where the public is not invited;"

(i) Amend section 1-201.10(B)(31)(c)(v) to read:

"(v) The premises of a church, temple or synagogue where food is normally prepared or served only for private family, religious or charitable functions to which the public (other than members of the church, temple, or synagogue) is not invited;"

(j) Amend section 1-201.10(B)(31)(c)(vi) to read:

"(vi) The portion of a bakery, convenience store, delicatessen, or grocery store not covered under subsection 1-201.10(B)(30)(b)(iii); and food or water vending machines. Any portion of 1-201.10(B)(30)(c)(vi) may be amended by a Memorandum of Understanding between the local health department and the Utah Department of Agriculture and Food to allow for a more cost effective use of local and state inspection resources;"

(k) Add section 1-201.10(B)(31)(c)(viii) to read:

"(viii) A home used to provide adult or child care for four or fewer persons."

(l) Amend definition 1-201.10(B)(33) to read:

"(33) "Game Animal" means an animal, the product of which is food, that is not classified as cattle, sheep, swine, or goat in 9 CFR Subchapter A- Mandatory Meat Inspection, part 301, as poultry in 9 CFR Subchapter C - Mandatory Poultry Products Inspection, part 381, or as fish."

(m) Amend definition 1-201.10 (B)(41) to read:

"(41) "Imminent Health Hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury or illness based on:

(i) the number of potential injuries or illnesses; and

(ii) the nature, severity, and duration of the anticipated injury or illness."

(n) Amend definition 1-201.10(B)(47) to read:

"(47) "Meat" means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish, poultry, and wild game animals as specified under Subparagraph 3-201.17(A)(3)."

(o) Amend definition 1-201.10(B)(61)(c)(v) to read:

"(v) A food for which a variance granted by FDA or USDA is based upon laboratory evidence which demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of *S. Enteritidis* in eggs or *C. botulinum* can not occur, such as a food that has an a_w and a pH that are above the levels specified under Subparagraphs (c)(ii) and (iii) of this definition and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or"

(p) Amend definition 1-201.10(B)(87) to read:

"(87) "Temporary food establishment" means:

(a) ~~[From January 15, 2002 through March 15, 2002 a food establishment that operates for a period of no more than 45 consecutive days in conjunction with a single event or celebration.~~

(b) ~~At all other times, it is a]~~ A food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

([e]b) "temporary food establishment" does not include:

(i) A food establishment that offers only commercially prepared and packaged foods that are not potentially hazardous and require no preparation or handling; or

(ii) A produce stand that offers only whole, uncut fresh fruit and vegetables."

(q) Amend the introduction to section 2-102.11 to read:

"Based on the risks of foodborne illness inherent to the food operation, during inspections and upon request the person in charge or the certified food safety manager shall demonstrate to the regulatory authority knowledge of foodborne disease prevention, application of the Hazard Analysis Critical Control Point principles, and the requirements of this code. The person in charge or the certified food safety manager shall demonstrate this knowledge by compliance with this code and by responding correctly to the inspector's questions as they relate to the specific food operation. The areas of knowledge include:"

(r) Adopt subsections 2-102.11(A) through (O) without changes.

(s) Add a new number/catchline and section to read:

"2-102.12 Food Employee Training.

Food employees shall be trained in food safety as required under 26-15-5 and shall hold a valid food safety permit."

(t) Amend section 2-301.12(A) to read:

"(A) Food employees shall clean their hands and exposed portions of their arms with a cleaning compound in a lavatory that is equipped as specified under section 5-202.12 by vigorously rubbing together the surfaces of their lathered hands and arms for at least 20 seconds and thoroughly rinsing with clean water. Employees shall pay particular attention to the areas underneath the fingernails and between the fingers."

(u) Amend section 2-301.15 to read:

"Food employees shall clean their hands in a handwashing lavatory or approved automatic handwashing facility and may not clean their hands in a sink used for food preparation, or a curbed cleaning facility used for the disposal of mop water and similar liquid waste."

(v) Amend section 2-401.11(B) to read:

"(B) A food employee may drink from a closed unbreakable beverage container if the container is handled to prevent contamination of:"

(w) Adopt subsections 2-401.11(B)(1) through (3) without changes.

(x) Amend section 2-403.11(B) to read:

"(B) Food employees with service animals may handle or care for their service animals and food employees may handle or care for fish in aquariums or molluscan shellfish or crustacea in display tanks if they wash their hands as specified under sections 2-301.12, 2-301.13, and section 2-301.14(C)."

(y) Add section 3-201.11(G) to read:

"(G) Except for food establishments that prepare fruit juices at point-of-sale, the use of unpasteurized fruit juices in food establishments is prohibited."

(z) Amend section 3-201.13 to read:

"Fluid milk and milk products shall be obtained from sources that comply with Grade A Pasteurized Standards as specified in law."

(aa) Amend section 3-201.16 to read:

"Wild mushroom species shall be obtained from an approved cultivated source under inspection by a regulatory authority."

(ab) Amend section 3-201.17(A)(1) to read:

"(1) Commercially raised for food and raised, slaughtered, and processed under a voluntary meat inspection program by the Utah Department of Agriculture and Food, Division of Animal Industry;"

(ac) Amend section 3-201.17(A)(2) to read:

"(2) Under a voluntary inspection program administered by the USDA for game animals such as exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and approved" in accordance with 9 CFR 352, Voluntary Exotic Animal Program; or"

(ad) Amend the introduction to section 3-201.17(A)(3) and subsections (a) and (b) to read:

"(3) Raised, slaughtered, and processed under a routine inspection program conducted by the Utah Department of Agriculture and Food, Division of Regulatory Services. Game meat under this program shall be:

(a) Slaughtered in a facility approved by the Utah Department of Agriculture and Food and with consideration of an antemortem and postmortem examination done by a veterinarian or a trained veterinarian designee, or as approved by the regulatory authority, and

(b) Processed under a HACCP plan according to laws governing meat and poultry products; or"

(ae) Amend section 3-301.11(B) to read:

"(B) Except when washing fruits and vegetables as specified under section 3-302.15, food employees shall minimize contact with exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissues, spatulas, tongs, single-use gloves, or dispensing equipment."

(af) Amend section 3-302.13 to read:

"3-302.13 Pasteurized Eggs, Substitute for Raw Shell Eggs for Certain Recipes.*

(A) Pasteurized eggs or egg products shall be substituted for raw shell eggs in the preparation of foods such as Caesar salad, hollandaise or Bearnaise sauce, mayonnaise, eggnog, ice cream, and egg-fortified beverages that are not cooked as specified in Subparagraphs 3-401.11(A)(1) or (2).

(B) Four or more eggs may not be pooled for use as an ingredient unless they are combined and cooked immediately."

(ag) Add section 3-304.12.5 to read:

"Utensils used for dispensing frozen desserts shall be stored using methods specified in sections 3-304.12(A), or (D)."

(ah) Amend section 3-304.13 to read:

"Linens or napkins may be used in contact with dry foods, such as breads and rolls, if the linens or napkins are replaced each time the container is refilled for a new consumer."

(ai) Amend section 3-401.11(A)(3) to read:

"74 degrees C (165 degrees F) or above for 15 seconds for poultry, wild game animals as specified under Subparagraph 3-201.17(A)(3), stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, poultry, or ratites."

(aj) Add section 3-501.14 (E) to read:

"(E) Whenever the temperature of a cooling potentially hazardous food is found to be out of the temperature ranges specified in section 3-501.14 (A)-(D), it shall be the responsibility of the person in charge to demonstrate to the regulatory authority that the facility has cooling procedures which are effective in meeting those requirements and that the procedures are followed."

(ak) Amend section 3-501.16(A) to read:

"At 57 degrees C (135 degrees F) or above, except that roasts cooked to a temperature and for a time specified under section 3-401.11(B) or reheated as specified in section 3-403.11(E) may be held at a temperature of 54 degrees C (130 degrees F); or"

(al) Amend Section 3-501.16(C)(2) to read:

"(2) By October 15, 2004 the equipment is upgraded or replaced to maintain food at a temperature of 5 degrees C (41 degrees F) or less."

(a[~~h~~]m) Add section 3-501.17(G) to read:

"(G) In a child care center, baby food, infant formula, and breast milk for infants that are brought from home for the individual child's use shall be:

(1) Marked with the name of the child and the date of bottling in the case of breast milk or opening of the container, such as a jar of baby food;

(2) Open containers of baby food, infant formula, and breast milk shall be refrigerated and stored for no more than 24 hours; and

(3) Infant formula shall be discarded after feeding or within two hours of initiating a feeding."

(a[~~m~~]n) Amend section 3-603.11 to read:

"3-603.11 Consumption of Animal Foods that are Raw, Undercooked, or Not Otherwise Processed to Eliminate Pathogens.*

(A) Except as specified in section 3-401.11(C) and subparagraph 3-401.11(D)(3), and under section 3-801.11(D), if an animal food such as beef, eggs, fish, lamb, milk, pork, poultry, or

shellfish that is raw, undercooked, or not otherwise processed to eliminate pathogens is offered in a ready-to-eat form as a deli, menu, vended, or other item; or as a raw ingredient in another ready-to-eat food, the permit holder shall inform consumers by identifying on the menu the foods that have significantly increased risk associated with certain especially vulnerable consumers eating such foods in raw or undercooked form. There are two components to satisfactory compliance with the consumer advisory:

Disclosure is satisfied when:

Items are asterisked to a footnote that states that the items:

- (a) Are served raw or undercooked, or
- (b) Contain (or may contain) raw or undercooked ingredients.

Reminder is satisfied when the items requiring disclosure are asterisked to a footnote that states:

"Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, pork, poultry, or shellfish reduces the risk of foodborne illness. Consult your physician or public health official for further information.""

(a[~~h~~]o) Amend section 3-801.11(D) to read:

"(D) Except when a resident or legal guardian has been informed of the hazards of eating raw or undercooked animal food per section 3-603.11(B) and signed a waiver requesting raw or undercooked animal foods, the following foods may not be served or offered for sale in a ready-to-eat form:"

(a[~~h~~]p) Adopt subsections 3-801.11(D)(1) through(3) without changes.

(a[~~h~~]q) Add section 4-204.124 to read:

"4-204.124 Restraint of Pressurized Containers.

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

(a[~~h~~]r) Amend section 4-205.10 to read:

"4-205.10 Food Equipment, Certification and Classification.

Food equipment installed after the effective date of this rule must be certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program in order to comply with Parts 4-1 and 4-2 of this chapter."

(a[~~h~~]s) Amend section 4-301.12 (C) to read:

"(C) Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and its use is approved. Alternative manual warewashing equipment may include:

- (1) High-pressure detergent sprayers;
- (2) Low- or line-pressure spray detergent foamers;
- (3) Other task-specific cleaning equipment;
- (4) Brushes or other implements; or
- (5) Receptacles that substitute for the compartments of a multi-compartment sink."

(a[~~h~~]t) Amend section 4-301.14 to read:

"4-301.14 Ventilation Hood Systems, Adequacy.

(A) Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings.

(B) A Type I or Type II hood shall be installed at or above all commercial heat-producing appliances according to the provisions of R156-56-701(d) International Mechanical Code, and amendments adopted under R156-56-708."

(a[~~h~~]u) Amend the introduction to section 5-101.11 to read:

"Drinking water shall be obtained from an approved water system as defined under R309-101 through R309-113 that is either:"

(a[~~u~~]v) Amend section 5-101.11(A) to read:

"(A) "Community water systems"

(a[~~u~~]w) Amend section 5-101.11(B) to read:

"(B) "Non-transient, non-community water system; or""

(a[~~w~~]x) Add section 5-101.11(C) to read:

"(C) "Non-community water system."

(a[~~x~~]y) Amend section 5-101.12 to read:

"A drinking water system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system by:

(A) The pipe system shall be flushed with clean, potable water until dirty water does not appear at the point of outlet.

(B) The system shall be filled with a water/chlorine solution containing:

(1) At least 50 parts per million (50mg/L) of chlorine and the system shall be valved off and allowed to stand at least 24 hours; or

(2) The system shall be filled with a water/chlorine solution containing at least 200 parts per million (200 mg/L) of chlorine and allowed to stand for three hours.

(C) Following the required standing time, the system shall be flushed with clean potable water until the chlorine is purged from the system.

(D) The procedure shall be repeated where shown by bacteriological examination that contamination remains present in the system."

(a[~~y~~]z) Amend section 5-102.11(A) to read:

"(A) Water from a public water system shall meet 40 CFR 141 - National Primary Drinking Water Regulations; and"

(a[~~z~~]ba) Amend section 5-102.11(B) to read:

"(B) R309-101 through R309-113 Rules for Public Drinking Water Systems."

(b[~~a~~]b) Amend section 5-102.13 to read:

"Water from a non-community water system, or a non-transient, non-community water system shall be sampled as required by R309-103 Drinking Water: Water Quality Maximum Contamination Levels (MCLs) and R309-104 Drinking Water: Monitoring, Reporting, and Public Notification and local drinking water quality regulations."

(b[~~b~~]c) Amend section 5-102.14 to read:

"The most recent sample report of the non-community water system or non-transient, non-community water system shall be retained on file in the food establishment and the report shall be maintained as required by R309-104-8."

(b[~~e~~]d) Amend section 5-103.11(B) to read:

"(B) Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food establishment, and"

(b[~~d~~]e) Add section 5-103.11(C) to read:

"(C) Hot and cold water shall be provided through tempered mixing faucets at all handwashing lavatories, food preparation sinks, warewashing sinks, service sinks, or curbed cleaning facilities."

(b[~~e~~]f) Amend section 5-202.11(A) to read:

"(A) A plumbing system shall be designed, constructed, and installed as required by R156-56-701(c) International Plumbing Code and R156-56-707 amendments to the International Plumbing Code."

(b[~~f~~]g) Amend section 5-202.12(A) to read:

"(A) A handwashing lavatory shall be equipped to provide water at a temperature of at least 95°F within 30 seconds of opening the mixing valve."

(b[~~g~~]h) Amend section 5-203.11(C) to read:

"(C) An adequate number of handwashing stations shall be provided for each temporary food establishment to include: a

minimum of one handwashing station equipped with one enclosed container with a spigot, soap, water, paper towels, and a collection container for waste water."

(b[~~h~~]i) Amend section 5-203.14 to read:

"Except for water heater drains and clothes washers a plumbing system shall be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the food establishment, including on a hose bibb if a hose is attached or on a hose bibb if a hose is not attached and backflow prevention is required by law, by:

(A) Providing an air gap as specified under section 5-202.13; or

(B) Installing an approved backflow prevention device as specified under section 5-202.14."

(b[~~i~~]j) Amend section 5-203.15 to read:

"The water supply to carbonators shall be installed according to the requirements of R156-56-701(c) International Plumbing Code and R156-56-707 Amendments to the International Plumbing Code."

(b[~~j~~]k) Amend section 5-205.13 to read:

"5-205.13 Scheduling Inspection and Service for a Water System Device.

(A) A device such as a water treatment devices shall be scheduled for inspection and service, in accordance with manufacturer's instructions and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection and service shall be maintained by the person in charge.

(B) The premise owner or responsible person shall have the backflow prevention assembly tested by a certified backflow assembly tester at the time of installation, repair, or relocation and at least on an annual schedule or more often when required by the regulatory authority."

(b[~~k~~]l) Amend section 6-201.14(A) to read:

"(A) A floor covering such as carpeting or similar material may not be installed as a floor covering in food preparation areas, walk-in refrigerator, warewashing areas, food storage, and toilet room areas where handwashing lavatories, toilets, and urinals are located, refuse storage rooms, or other areas subject to moisture, flushing, or spray cleaning methods."

(b[~~l~~]m) Amend section 6-301.11 to read:

"6-301.11 Handwashing Cleaners and Hand Sanitizers, Availability.

(A) Each handwashing lavatory or group of 2 adjacent lavatories shall be provided with a supply of hand cleaning liquid, powder, bar soap; and

(B) When a hand sanitizer is used, each handwashing lavatory or group of 2 adjacent lavatories shall be provided with a hand sanitizer or a chemical hand sanitizing solution used as a hand dip.

(C) When a hand sanitizer is used, the dispenser for the hand sanitizer or the chemical hand sanitizing solution used as a hand dip shall be located at the handwashing lavatory and may not be located anywhere else."

(b[~~m~~]n) Amend section 6-301.13 to read:

"Except for a combination sink approved by the regulatory authority, a sink used for food preparation or utensil washing, or curbed cleaning facility used for the disposal of mop water or similar wastes, may not be provided with the handwashing aids and devices required for a handwashing lavatory as specified in sections 6-301.11, 6-301.12, and section 5-501.16(C)."

(b[~~n~~]o) Amend section 6-501.111 to read:

"The presence of insects, rodents, and other pests shall be controlled by:

(A) Routinely inspecting incoming shipments of food and supplies;

(B) Routinely inspecting the premises for evidence of pests;

(C) Using methods, if pests are found, such as trapping devices or other means of pest control as specified under sections 7-202.12, 7-206.12, and 7-206.13; and

(D) Eliminating harborage conditions."

(b[~~o~~]p) Add section 7-203.12 number/catchline to read:

"7-203.12 Food Containers Prohibited from Storing Toxic Materials."

(b[~~p~~]q) Add section 7-203.12 to read:

"A food container may not be used to store, transport, or dispense poisonous or toxic materials.

(b[~~q~~]r) Amend section 8-103.10 to read:

"8-103.10 Modifications and Waivers.

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

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

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

(b[~~r~~]s) Amend section 8-103.11 to add:

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

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

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

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

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

(b[~~s~~]t) Amend Section 8-302.14 (C) to read:

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

(b[~~t~~]u) Delete [~~subsections D and E~~]Sections 8-302.14 (D) and (E).

(b[~~u~~]v) Amend section 8-302.14 to renumber (F) to (D), (G) to (E), and (H) to (F).

(b[~~v~~]w) Amend section 8-304.10(A) to read:

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

(b[~~w~~]x) Amend section 8-304.11(H) to read:

"(H) Upgrade or replace refrigeration equipment as specified under section 3-501.16(C), if the circumstances specified under Subparagraphs (G)(1)-(3) of this section do not occur first, and by no later than October 15, 2004;"

(b[~~x~~]y) Amend section 8-304.11(J) to read "Accept notices issued and served by the REGULATORY AUTHORITY according to LAW."

(b[~~y~~]z) Amend section 8-304.11(K) to read "Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this Code or a directive of the

regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives; and".

~~[(bz) Add section 8-304.11(L) to read:~~

~~"(L) Post the most recent copy of the inspection report in the employee work area."~~

(ca) Amend section 8-401.10(A) to read:

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

(cb) Amend section 8-403.50 to read:

"Except as specified in section 8-202.10, the regulatory authority shall treat the inspection report as a public document and shall make it available for disclosure to a person who requests it as provided in law~~[, but no sooner than 30 days following the inspection].~~"

(cc) Amend section 8-501.10(B) to read:

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

(cd) Add section 8-501.10(C) to read:

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

(ce) Amend section 8-601.10 to read:

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

(cf) Amend section 8-701.30 to read:

"Service is effective at the time the notice is served or when service is made as specified in section 8-701.20(B)."

(cg) Amend section 8-803.10 to read:

"8-803.10 Impoundment of Adulterated Food Products Authorized.

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

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

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

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

(ch) Amend section 8-803.60 to read:

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

(ci) Amend section 8-803.90 to read:

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

(cj) Amend section 8-804.30 number/catchline to read:

"8-804.30 Contents of the Summary Suspension Notice."

(ck) Amend section 8-805.10(A) to read:

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

(cl) Amend section 8-805.20 to read:

"A response to a hearing notice or a request for a hearing as specified in section 8-805.10 shall be in written form and contain the following:

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

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

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

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

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

(B) A request for hearing must include:

(1) A statement of the issues of fact specified in section 8-805.30(B) for which a hearing is requested; and

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

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

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

(cm) Amend the introduction to section 8-805.50(A)(1) to read:

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

(cn) Adopt subsections 8-805.50(A)(1)(a) through (c) without changes.

(co) Amend subsection 8-805.50(A)(2) to read:

"(2) Within 30 calendar days after the service of a hearing notice to consider administrative remedies for other matters as specified in section 8-805.10(C) or for matters as determined necessary by the regulatory authority."

(cp) Amend section 8-805.60 number/catchline to read:

"8-805.60 Notice of Hearing Contents."

(cq) Amend section 8-805.80 number/catchline to read:

"8-805.80 Expeditious and Impartial Hearing."

(cr) Amend section 8-805.90 number/catchline to read:

"8-805.90 Confidentiality of Hearing and Proceedings."

(cs) Amend section 8-805.90(A) to read:

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

(ct) Amend the introduction to section 8-806.30(B) to read:

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

(cu) Adopt subsections 8-806.30(B)(1) through (2) without changes.

(cv) Amend section 8-807.60 to read:

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

(cw) Amend section 8-808.20 to read:

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

(cx) Amend section 8-811.10(B) to read:

"(B) Any person who violates any provision of this rule may be assessed a civil penalty not to exceed the sum of \$5,000.00 or be punished for violation of a class B misdemeanor for the first violation. For any subsequent similar violation within two years, the person may be punished for violation of a class A misdemeanor as provided in section 26-23-6."

(cy) Amend section 8-813.10 number/catchline to read:

"8-813.10 Petitions, Penalties, Contempt, and Continuing Violations."

(cz) Amend section 8-813.10(B) to replace the phrase "(designate amount)" with the phrase "\$5,000".

(da) Add paragraph 8-813.10(D) to read:

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

KEY: public health, food services

2002

Notice of Continuation May 17, 2002

26-1-30(2)

26-15-2



End of the Notices of Changes in Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (*Utah Code* Subsection 63-46a-7(1) (2001)).

As with a PROPOSED RULE, a 120-DAY RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the 120-DAY RULE including the name of a contact person, justification for filing a 120-DAY RULE, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (· · · · ·) indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A 120-DAY RULE is effective for 120 days or until it is superseded by a permanent rule.

Because 120-DAY RULES are effective immediately, the law does not require a public comment period. However, when an agency files a 120-DAY RULE, it usually files a PROPOSED RULE at the same time, to make the requirements permanent. Comment may be made on the proposed rule. Emergency or 120-DAY RULES are governed by *Utah Code* Section 63-46a-7 (2001); and *Utah Administrative Code* Section R15-4-8.

Natural Resources, Parks and Recreation **R651-206** Carrying Passengers for Hire

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 24989
FILED: 06/17/2002, 08:56

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To update and add the permits/licenses required by a person engaged in carrying passengers for hire on Bear Lake, Flaming Gorge or Lake Powell.

SUMMARY OF THE RULE OR CHANGE: This rule change will add a Vessel Operator Permit required by person(s) leading passengers for hire, not just carrying passengers for hire. (DAR NOTE: A corresponding proposed amendment is under DAR No. 25015 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 73-18-4(4)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** Since this is a permit/license change only there is no anticipated aggregate anticipated cost or savings to the state budget. The state will, however, collect fees from an unknown number of operators who elect to lead people for hire.
- ❖ **LOCAL GOVERNMENTS:** There is no monetary change or item directly related to local government, and therefore there is no aggregate anticipated cost or savings to local government.
- ❖ **OTHER PERSONS:** If a person should enter into the business

of carrying or leading persons for hire on waters at Bear Lake, Flaming Gorge or Lake Powell and get the required permits, the person may be charged for the new permit named in this rule change. Cost will be \$60 per three years to the operator of the vessel. If a person leading persons for hire at Bear Lake, Flaming Gorge or Lake Powell does not have the proper permits when carrying or leading person(s) at Bear Lake, Flaming Gorge, or Lake Powell, then a ticket could be issued and a fine levied on that person. Fines imposed would be up to the judge, but other like fines are about \$100.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If a person should enter into the business of carrying or leading persons for hire on waters at Bear Lake, Flaming Gorge or Lake Powell and get the required permits, the person may be charged for the new permit named in this rule change. Cost will be \$60 per three years to the operator of the vessel. If a person leading persons for hire at Bear Lake, Flaming Gorge or Lake Powell does not have the proper permits when carrying or leading person(s) at Bear Lake, Flaming Gorge, or Lake Powell, then a ticket could be issued and a fine levied on that person. Fines imposed would be up to the judge, but other like fines are about \$100.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule cited herein will not have a fiscal impact on businesses.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

The nature of these rules combined with complexities of time, stress, and timeliness of board action because of having to deal with severe state parks budget cuts, suggests that having the rule in place in a timely manner, and the division/department being able to establish a position regarding the rules, was not possible with the priority being

the budget cuts to the division. This rule will serve to bring the boating laws into compliance with the Boating Act passed by the Legislature in their last legislative session. (DAR NOTE: See H.B. 4 which is found at UT L 2002 Ch 200 and was effective July 1, 2002.)

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

THIS RULE IS EFFECTIVE ON: 07/01/2002

AUTHORIZED BY: Dave Morrow, Deputy Director

R651. Natural Resources, Parks and Recreation.

R651-206. Carrying Passengers for Hire.

R651-206-1. Vessel Operator Permit.

(1) As used in this rule: "Operator Permit" means a valid Utah Vessel Operator Permit issued by the division or a valid Coast Guard Motorboat Operator License. The operator permit must be accompanied by a current and original Standard American Red Cross First Aid Card or equivalent and a current and original American Red Cross or American Heart Association "CPR" card.

(2) No person shall operate a vessel engaged in carrying passengers for hire on any lake or reservoir of this state unless the individual has in his possession an Operator Permit or is operating under Section R651-206-2.

(3) To obtain a Utah Vessel Operator Permit, the applicant must be at least 18 years old, complete the prescribed form, possess the required first aid and CPR certification, successfully complete a written examination, pay a \$60 fee, and have 80 hours of experience in vessel operation, 20 hours of which was obtained operating an equivalent type and size of vessel which will be used for carriage of passengers. If the applicant fails to pass the written examination, there is a 7-day waiting period and a \$15 retest fee per attempt.

(4) A Utah Vessel Operator Permit is valid for three years from date of issue, unless suspended or revoked.

(5) A Utah Vessel Operator Permit may be renewed up to six months prior to expiration, upon completion of the prescribed form, presentation of required first aid and CPR certification, and payment of a \$45 fee. The renewed permit shall have the same month and day expiration date as the original permit.

(6) A Utah Vessel Operator Permit which has expired shall not be renewed but is required to obtain a new permit as outlined above.

(7) In the event a Utah Vessel Operator Permit is lost or stolen, a duplicate permit may be issued with the same expiration date as the original permit upon completion of the prescribed form, payment of a \$25 fee. An application for a duplicate permit must have

original signatures and be accompanied by original documentation of required first aid and CPR certification.

(8) Current Utah Vessel Operator Permit holders shall notify the Division, within 30 days, of any change of address.

(9) A Utah Vessel Operator Permit may be suspended or revoked for a length of time determined by the division director, or individual designated by the division director, if one of the following occurs:

(a) the permit holder is convicted of boating under the influence of alcohol or any drug, or refuses to submit to any chemical test which determines blood or breath alcohol content;

(b) the permit holder's negligence causes personal injury or death as determined by due process of the law;

(c) the permit holder is convicted of three violations of Title 73 Chapter 18 or rules promulgated thereunder during a three-year period; or

(d) the division determines that the permit holder intentionally provided false or fictitious statements or qualifications to obtain the permit.

(10) A person shall not operate an unfamiliar vessel carrying passengers for hire or operate on unfamiliar water unless there is an operator permit holder aboard who is familiar with the vessel and the water area.

(11) A valid Coast Guard Motorboat Operator License must be possessed if engaging in carrying passengers for hire on Bear Lake, Flaming Gorge, or Lake Powell, or a Vessel Operator Permit if leading persons for hire.

R651-206-2. River Guide Permit.

(1) As used in this rule:

(a) "Agent" means a person(s) designated by an outfitting company to act in behalf of that company in certifying a river guide's experience.

(b) "Certifying experience" means river running experience obtained within ten years of the date of application for the guide permit.

(c) "Guide 1" means a nonrestrictive river guide permit.

(d) "Guide 2" means a restricted river guide permit, which is valid only on other rivers.

(e) "Guide 3" means an apprentice river guide permit, which is valid only when the holder is accompanied on the white water river by a qualified Guide 1 permit holder. A Guide 3 permit is also valid on other rivers, but must be accompanied by either a Guide 1 or 2 permit holder.

(f) "Guide 4" means a restricted apprentice river guide permit, which is valid only on other rivers when the holder is accompanied on the trip by a qualified Guide 1 or 2 permit holder.

(g) "Guide permit" means a valid Guide 1, 2, 3, or 4 permit issued by the division for carrying passengers for hire. For a Guide 1 or 2 permit to be valid they must be accompanied by a current "Emergency Response" American Red Cross First Aid Card or equivalent and an American Heart Association or an American Red Cross "CPR" Card. For a Guide 3 or 4 permit to be valid they must be accompanied by a current "Standard" American Red Cross First Aid Card or equivalent and an American Heart Association or an American Red Cross "CPR" Card. A photo copy of both sides of the required first aid and CPR certification cards is allowed.

(h) "Low capacity vessel" means a vessel with a carrying capacity of three or fewer occupants (e.g. canoe, kayak, inflatable kayak or similar vessel).

(i) "Other rivers" means all rivers, river sections, or both in Utah not defined in Subsection R651-202-2(1) as a whitewater river.

(j) "Whitewater river" means the following river sections: the Green and Yampa rivers within Dinosaur National Monument, the Green River in Desolation-Gray Canyon (Mile 96 to Mile 20), the Colorado River in Westwater Canyon, the Colorado River in Cataract Canyon, or other division recognized whitewater rivers in other states.

(2) No person shall operate a vessel engaged in carrying passengers for hire on any river of this state unless that person has in his possession the appropriate valid river guide permit. For low capacity vessels not operated by but led by a guide permit holder, there shall be at least one qualified guide permit holder for every four low capacity vessels being led in the group.

(3) To qualify for a Guide 1 permit, the applicant must be at least 18 years of age, complete the prescribed form, be current in the required first aid and CPR certification, successfully complete a written examination, pay a \$30 fee and have operated a vessel on at least nine whitewater river sections. If the applicant fails to pass the written examination, there is a 7-day waiting period and a \$15 retest fee per attempt.

(4) To qualify for a Guide 2 permit, the applicant must be at least 18 years of age, complete the prescribed form, be current in the required first aid and CPR certification, successfully complete a written examination, pay a \$30 fee and have operated a vessel on at least six river sections. If the applicant fails to pass the written examination, there is a 7-day waiting period and a \$15 retest fee per attempt.

(5) To qualify for a Guide 3 permit, the applicant must be at least 18 years of age, complete the prescribed form, be current in the required first aid and CPR certification, pay a \$20 fee and have operated a vessel on at least three whitewater river sections.

(6) To qualify for a Guide 4 permit, the applicant must be at least 18 years of age, complete the prescribed form, be current in the required first aid and CPR certification, pay a \$20 fee and have operated a vessel on at least three river sections.

(7) Any person applying for a duplicate, renewal, or a new guide permit shall be employed by or be a prospective employee of an outfitting company currently registered with the division. The applicant shall be sponsored by that outfitting company, or be currently employed and sponsored by a federal, state or county agency. Permit applications must have original signatures and be accompanied by original documentation of required first aid and CPR certification.

(8) Guide 3 and 4 permits shall expire annually on December 31. Guide 1 and 2 permits shall expire three years from date of issuance.

(9) Guide 1 or 2 permits may be renewed up to six months prior to expiration upon completion of the prescribed form, presentation of current guide permit, required first aid and CPR certification, and payment of a \$30 fee. The renewed permit shall have the same month and day expiration date as the original permit. Any Guide 1 or 2 permit holder whose permit has expired shall be required to obtain a new Guide 1 or 2 permit as outlined above.

(10) In the event a guide permit is lost or stolen a duplicate guide permit may be issued with the same expiration date as the original permit upon completion of the prescribed form, furnishing the required information as described in (7) above and payment of the required fee. The fee shall be \$15 for a Guide 1 or 2 permit, and \$15 for a Guide 3 or 4 permit.

(11) All boatman permits issued by the division are expired.

(12) Current Guide Permit holders shall notify the Division, within 30 days, of any change of address.

(13) A guide permit holder shall not carry passengers for hire on his first trip on an unfamiliar river unless there is a qualified Guide 1 or 2 permit holder aboard who has operated a similar vessel on that river segment.

(14) A guide permit may be suspended or revoked for a length of time determined by the division director, or individual designated by the division director, if one of the following occurs:

(a) the guide permit holder is convicted of boating under the influence of alcohol or any drug, or refuses to submit to any chemical test which determines blood or breath alcohol content;

(b) the guide permit holder's negligence causes personal injury or death as determined by due process of the law;

(c) the guide permit holder is convicted of three violations of Title 73 Chapter 18 or rules promulgated thereunder during a three-year period;

(d) the division determines that the guide permit holder intentionally provided false or fictitious statements or qualifications to obtain the guide permit; or

(e) a guide permit holder has utilized a private river trip permit for carrying passengers for hire and has been prosecuted by the issuing agency and found guilty of the violation.

(15) Every outfitting company carrying passengers for hire on any river of this state shall register with the division annually prior to commencement of operation. The registration requires the completion of the prescribed form and providing the following: evidence of registration with the Department of Commerce, evidence of river trip authorization from the appropriate controlling state or federal agency, and payment of a \$200 fee.

(16) The agent shall certify and guarantee that each river guide sponsored by the outfitting company that he represents has obtained the necessary experience, as required above, depending on the type of guide permit applied for.

(17) An outfitting company's division registration may be suspended or revoked for a length of time determined by the division director, or individual designated by the division director, if one of the following occurs:

(a) the outfitting company's or agent's negligence caused personal injury or death as determined by due process of the law;

(b) the outfitting company or agent is convicted of three violations of Title 73 Chapter 18 or rules promulgated thereunder during a calendar year period;

(c) false or fictitious statements were certified or false qualifications were used to qualify a person to obtain a guide permit for an employee or others;

(d) the division determines that the outfitting company intentionally provided false or fictitious statements or qualifications when registering with the division;

(e) an outfitting company has utilized a private river trip permit for carrying passengers for hire and have been prosecuted by the issuing agency and found guilty of the violation; or

(f) the outfitting company used a guide without a valid guide permit or without the appropriate guide permit while engaging in carrying passengers for hire.

KEY: boating

July 1, 2002

Notice of Continuation August 7, 2001

73-18-4(4)

**Natural Resources, Parks and
Recreation
R651-215
Personal Flotation Devices**

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE No.: 24988
FILED: 06/17/2002, 08:45

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To more clearly define the type of kayak operator who does not require Type I personal flotation devices (PFDs). Hard-hulled kayak or whitewater canoe operators or a working river guide may wear a Type III PFD, if approved on the label for this type activity.

SUMMARY OF THE RULE OR CHANGE: Adding the words "hard-hulled" to kayak clearly shows the type of kayak intended for where the operator may wear a Type III PFD instead of a Type I. Several years ago Type III PFDs were worn for kayak or whitewater canoe operators or a working river guide. The intent was not for the Type III PFD to be used in inflatable kayaks (rubber duckies). this change would only allow the Type III PFD to be used in hard-hulled kayaks. (DAR NOTE: A corresponding proposed amendment is under DAR No. 25014 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 73-18-8

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** Since this is for definition purposes only, there is no aggregate anticipated cost or savings to the state budget.
- ❖ **LOCAL GOVERNMENTS:** This definition is for the state waters and flotation devices worn by the public. There is no aggregate cost or savings to the local government.
- ❖ **OTHER PERSONS:** Clarification of type of kayak that does not require a Type I PFD. Therefore no cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Clarification of kayak and who may wear a Type III PFD, if approved should not create any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule cited herein will not have a fiscal impact on businesses.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES would place the agency in violation of federal or state law.

There were many complexities with time, stress, and timeliness of board action because of having to deal with budget cuts to the state parks, and this suggests that having the rule in place in a timely manner, and the division/department being able to establish a position regarding the rule, was not possible because of the priority

being the budget cuts to the division. This rule will also serve to bring the boating laws into compliance with the Boating Act passed by the Legislature in their last legislative session. (DAR NOTE: See H.B. 4 which is found at UT L 2002 Ch 200 and was effective July 1, 2002.)

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

THIS RULE IS EFFECTIVE ON: 07/01/2002

AUTHORIZED BY: Dave Morrow, Deputy Director

**R651. Natural Resources, Parks and Recreation.
R651-215. Personal Flotation Devices.**

R651-215-1. Definitions.

- (1) "PFD" means personal flotation device.
- (2) "Vessel length" is the measurement of the permanent part of the hull, from bow to stern, across the deck down the centerline, excluding sheer.
- (3) "Wear" means to have the PFD properly worn with all fasteners connected.
- (4) "White water canoe" means a one or two person capacity hard hulled canoe designed for white water activities and is equipped with: floatation (e.g., factory end chambers or float bags) and thigh straps or retention devices to hold the operator(s) in the vessel if it rolls.

R651-215-2. PFD Requirements for Vessels Less than 16 Feet in Length.

No person shall operate or give permission for the operation of a vessel less than 16 feet in length unless there is at least one Type I, II, or III PFD for each person on board.

R651-215-3. PFD Requirements for Vessels 16 Feet or More in Length.

No person shall operate or give permission for the operation of a vessel 16 feet or more in length unless there is at least one Type I, II, or III PFD for each person on board. In addition to the total number of PFD's, there shall also be one Type IV PFD on board.

R651-215-4. Types of Personal Flotation Devices.

Type I - Life Preserver - has ~~20~~22 pounds of flotation and will turn an unconscious person face up. Acceptable for use on all vessels.

Type II - Buoyant Vest - has 15.5 pounds of flotation and will turn most unconscious persons face up.

Type III - Special Purpose - has 15.5 pounds of buoyancy. There are many special designs for water sports.

Type IV - Throwable - has 16.5 pounds of flotation and is designed to be thrown, not worn. Must have as an additional device on class 1, 2, or 3 vessels.

Type V - Restricted Special Purpose Devices - approved only for the activities listed on the label.

R651-215-5. Immediately Available and Readily Accessible.

Type IV PFDs shall be immediately available; all other types of PFD shall be readily accessible, unless wearing is required.

R651-215-6. Type V PFD Carried in Lieu.

A Type V PFD may be carried in lieu of any required PFD, but only if the Type V PFD is approved for the activity in which the vessel is being used.

R651-215-7. Whitewater River PFD Requirements.

On whitewater rivers, as defined in Subsection R651-206-2 (1), Type I or Type III PFDs, if approved on the label for the activity, are required.

R651-215-8. Carrying Passengers for Hire PFD Requirements.

On rivers, if carrying passengers for hire, Type I PFDs are required, except hard-hulled kayak or white water canoe operators or a working river guide may wear a Type III PFD, if approved on the label for this activity. The required Type IV PFD shall be a ring life buoy on vessels 26 feet or more in length.

R651-215-9. River Throw Bag in Lieu of Type IV PFD.

On rivers, in lieu of the Type IV PFD requirement, a throw bag with a minimum of 40 feet of line may be carried.

R651-215-10. Passengers for Hire PFD Requirement.

When carrying passengers for hire, except on rivers, Type I PFDs are required. The required Type IV PFD shall be a ring life buoy on vessels 26 feet or more in length.

R651-215-11. Required Wearing of PFDs.

(1) An inflatable PFD may not be used to meet the requirements of this Section.

(2) All persons on board a personal watercraft or a sailboard shall wear a PFD.

(3) The operator of a vessel under 19 feet in length shall require each passenger 12 years of age or younger to wear a PFD. This rule is also applicable to vessels 19 feet or more in length, except when the child is inside the cabin area.

(4) On rivers, every person on board a vessel shall wear a PFD, except PFDs may be loosened or removed by persons 13 years of age or older on designated flat water areas as listed in Section R651-215-12. When carrying passengers for hire, the river guide is responsible for the passengers on his vessel to be in compliance with this Subsection.

R651-215-12. River Flat Water Areas.

(1) On the Green River:

(a) from Red Creek Camp below Red Creek Rapids to the Indian Crossing Boat Ramp;

(b) from 100 yards below Taylor Flats Bridge to the Utah/Colorado state line in Browns Park;

(c) within Dinosaur National Monument, from the mouth of Whirlpool Canyon to the head of Split Mountain Gorge;

(d) from the mouth of Split Mountain to Jack Creek in Desolation Canyon; and

(e) from the Green River Diversion Dam below Gray Canyon to the confluence with the Colorado River.

(2) On the Colorado River:

(a) from the Colorado/Utah state line to the Westwater Ranger Station;

(b) from Big Hole Canyon in Westwater Canyon to Onion Creek;

(c) from Drinks Canyon, mile 70, to the confluence with the Green River; and

(d) after the last active rapid in Cataract Canyon.

(3) On the San Juan River, after the last active rapid prior to Lake Powell.

KEY: boating

July 1, 2002

**Notice of Continuation August 7, 2001
73-18-8**



**Natural Resources, Parks and
Recreation**

R651-216

**Navigation Lights - Note: Figures 1
through 7 mentioned below are on file
with the Utah Division of Parks and
Recreation**

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE No.: 24993

FILED: 06/17/2002, 10:18

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is to add a new section that prohibits the use of non-navigational lights on vessels, except to locate a hazard to navigation and/or during a state or federally permitted parade.

SUMMARY OF THE RULE OR CHANGE: Vessels may only display lights as stated in the rule, except that a spotlight or other navigational light may be used intermittently to locate a hazard to navigation, or non-navigational lights may be used during a federally or state permitted marine parade. (DAR NOTE: A corresponding proposed amendment is under DAR No. 25013 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 73-18-8(2)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** Locating hazards to navigation and spotlights will have no aggregate anticipated cost or savings to the State budget.

❖ LOCAL GOVERNMENTS: The state is responsible for boating safety in the State of Utah. There will be no impact on local government with this amendment.

❖ OTHER PERSONS: The proposed change simply clarifies when non-navigational lights may be used. It imposes no new requirement with a related cost or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed change simply clarifies when non-navigational lights may be used. It imposes no new requirement with a related cost or savings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule amendment will have no impact on businesses.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare. place the agency in violation of federal or state law.

There were many complexities with time, stress, and timeliness of board action because of having to deal with budget cuts to the state parks, and this suggests that having the rule in place in a timely manner, and the division/department being able to establish a position regarding the rule, was not possible because of the priority being the budget cuts to the division. This rule will also serve to bring the boating laws into compliance with the Boating Act passed by the Legislature in their last legislative session. (DAR NOTE: See H.B. 4 which is found at UT L 2002 Ch 200 and was effective July 1, 2002.)

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

THIS RULE IS EFFECTIVE ON: 07/01/2002

AUTHORIZED BY: Dave Morrow, Deputy Director

R651. Natural Resources, Parks and Recreation.
R651-216. Navigation Lights - Note: Figures 1 through 7 mentioned below are on file with the Utah Division of Parks and Recreation.
R651-216-1.

Motorboats of less than 40 feet in length shall exhibit the navigation lights shown in either figure 1, 2, or 3.

R651-216-2.

Motorboats 40 feet in length to less than 65 feet in length shall exhibit the navigation lights shown in either figure 1 or 2.

R651-216-3.

Sailboats shall exhibit the navigation lights shown in either figure 4, 5, or 6.

R651-216-4.

A sailboat under motor power shall exhibit the motorboat navigation light requirements.

R651-216-5.

A vessel manually propelled may exhibit the navigation lights required for sailboats or have ready at hand a flashlight or lighted lantern showing a white light which shall be displayed in sufficient time to prevent collision (figure 7).

R651-216-6.

Vessels at anchor shall display an all-round white anchor light unless anchored in a designated mooring area.

.....

R651-216-8. Use of Non-Navigational Lights.

Vessels may only display lights as outlined above, except: (a) a spotlight or other non-navigational light may be used intermittently to locate a hazard to navigation, or (b) non-navigational lights may be used during a federal or state permitted marine parade.

KEY: boating

July 1, 2002

Notice of Continuation November 13, 2001

73-18-8(2)



Natural Resources, Parks and Recreation

R651-219

Additional Safety Equipment

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 24990

FILED: 06/17/2002, 09:40

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To correct the word "paddles" to "propulsion" to match the reference title, "R651-219-3. Spare Propulsion".

SUMMARY OF THE RULE OR CHANGE: Making this change allows the title and the reference to that title to be the same. It is a reference correction only. (DAR NOTE: A corresponding proposed amendment is under DAR No. 25010 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 73-18-8(6)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This is simply a word change to match the title it refers to in Section R651-219-3. Therefore, there is no anticipated cost or savings to the State budget.
- ❖ LOCAL GOVERNMENTS: Local government has no jurisdiction over state waters and since this is a word change there is no anticipated cost or savings to the local government.
- ❖ OTHER PERSONS: Other persons are not affected by this word change other than it now matches the the title it refers to. Other persons will have no cost with this amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No person is affected by this rule as there are no compliance costs associated with the filing of the amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule amendment will have no fiscal impact on businesses.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

There were many complexities with time, stress, and timeliness of board action because of having to deal with budget cuts to the state parks, and this suggests that having the rule in place in a timely manner, and the division/department being able to establish a position regarding the rule, was not possible because of the priority being the budget cuts to the division. This rule will also serve to bring the boating laws into compliance with the Boating Act passed by the Legislature in their last legislative session. (DAR NOTE: See H.B. 4 which is found at UT L 2002 Ch 200 and was effective July 1, 2002.)

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DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

THIS RULE IS EFFECTIVE ON: 07/01/2002

AUTHORIZED BY: Dave Morrow, Deputy Director

R651. Natural Resources, Parks and Recreation.

R651-219. Additional Safety Equipment.

R651-219-1. Sound Producing Device.

(1) Vessels 16 feet to less than 40 feet in length shall have on board a means of making an efficient sound, horn or whistle, capable of a four-to-six-second blast.

(2) Vessels 40 feet to less than 65 feet in length shall have on board a horn and a bell. The horn shall be capable of a four-to-six-second blast and audible for one-half mile. The bell shall be designed to give a clear tone.

R651-219-2. Bailing Device.

All vessels, not of self-bailing design, shall have on board an adequate bail bucket or be equipped with a mechanical means for pumping the bilge.

R651-219-3. Spare Propulsion.

Vessels less than 21 feet in length shall have on board at least one spare motor, paddle or oar capable of maneuvering the vessel when necessary. On rivers when one-or-two-man capacity vessels less than 16 feet in length are traveling in a group, the above requirement may be met by carrying one spare oar or paddle for every three vessels in the group. On hard hulled white water kayaks, paddles designed to be strapped to or worn on the hand must meet this requirement.

R651-219-4. Airboat Requirements.

Airboats operated on the Great Salt Lake and adjacent refuges shall also have on board a compass and one of the following: approved flares, a strobe light, or other visual distress signal.

R651-219-5. Equipment Good and Serviceable.

All required safety equipment shall be in good and serviceable condition.

R651-219-6. Law Enforcement Vessels.

No vessel operator except authorized law enforcement and emergency vessel operators may display red or blue flashing lights or sound a siren on any waters of this state.

R651-219-7. Equipment Exemptions.

(1) Sailboards and personal watercraft are exempt from the following rules: Section R651-219-2 bail buckets; Section R651-219-3 spare [~~paddles~~]propulsion; and Section R651-225-4 prohibiting riding on exterior surfaces.

(2) Vessels owned by the Lagoon Corporation and operated by its employees or customers under the controlled use and confines of the Lagoon Amusement Park waterways are exempt from the following Sections: R651-215-11 (3), R651-219-2, and R651-219-3.

(3) Vessels owned by the Salt Lake Airport Hilton Inn and operated by its employees or customers under the controlled use and confines of the Salt Lake Airport Hilton Inn waterways are exempt from the following sections: R651-219-2 and R651-219-3.

(4) Racing vessels participating in a sanctioned race may be exempted from certain equipment requirements by the division upon written request to the division. The equipment exemption shall only be in effect the day before and the day of the race if conditions of the exemption are met.

KEY: boating

July 1, 2002

Notice of Continuation November 13, 2001
73-18-8(6)



**Natural Resources, Parks and
Recreation
R651-221
Boat Livery Agreements**

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE No.: 24995
FILED: 06/17/2002, 10:19

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To add an authorized agent of the division to receive a copy of the lease or rental agreement from the owner of a boat or livery or his representative.

SUMMARY OF THE RULE OR CHANGE: By adding "to an authorized agent of the Division," it clarifies who can review the lease or rental copy from the owner of a boat livery or his representative. (DAR NOTE: A corresponding proposed amendment is under DAR No. 25017 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 73-18-10(2)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There are no anticipated costs or savings because of this amendment to the state budget. It is to identify who receives a copy of the lease or rental agreement.
- ❖ **LOCAL GOVERNMENTS:** There will be no effect to local government and no anticipated cost or savings. This amendment is to clarify who receives copies of the legal documents for the divisions.
- ❖ **OTHER PERSONS:** No compliance costs as this 120-day rule simply directs who will get a copy of the lease or rental contract/agreement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs as this 120-day rule simply directs who will get a copy of the lease or rental contract/agreement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule cited herein will not have a fiscal impact on businesses.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES would place the agency in violation of federal or state law.

There were many complexities with time, stress, and timeliness of board action because of having to deal with budget cuts to the state parks, and this suggests that having the rule in place in a timely manner, and the division/department being able to establish a position regarding the rule, was not possible because of the priority being the budget cuts to the division. This rule will also serve to bring the boating laws into compliance with the Boating Act passed by the legislature in their last legislative session. (DAR NOTE: See H.B. 4 which is found at UT L 2002 Ch 200 and was effective July 1, 2002.)

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

THIS RULE IS EFFECTIVE ON: 07/01/2002

AUTHORIZED BY: Dave Morrow, Deputy Director

**R651. Natural Resources, Parks and Recreation.
R651-221. Boat Livery Agreements.
R651-221-1.**

The owner of a boat livery or his representative shall provide a copy of the lease or rental agreement, to an authorized agent of the Division, signed by the owner or his representative and by the person leasing or renting the vessel. The lease or rental agreement shall contain the following information and be carried on board the vessel: the vessel's assigned number; the period of time for which the vessel is leased or rented; and a check-off list of the required safety equipment. The registration card may be retained on shore by the boat livery.

KEY: boating

July 1, 2002

**Notice of Continuation November 13, 2001
73-18-10(2)**

**Natural Resources, Parks and
Recreation
R651-223
Vessel Accident Reporting**

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE No.: 24991
FILED: 06/17/2002, 10:06

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To increase the amount when property is damaged in excess of \$500. That amount will change to \$2,000. The Coast Guard increased the property damage amount for a reportable boating accident from \$500 to \$2,000. This change will bring Parks into line with federal requirements.

SUMMARY OF THE RULE OR CHANGE: The Coast Guard increased the property damage amount for a reportable boating accident

from \$500 to \$2,000. This change will bring us in line with federal requirements. (DAR NOTE: A corresponding proposed amendment is under DAR No. 25012 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 73-18-3

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This rule amendment brings our boating rules and regulations in line with federal requirements. There are no anticipated costs or savings to the state budget. The rule change implements no new requirement, but merely adjusts the dollar amount of damage at which an accident becomes reportable.

❖ LOCAL GOVERNMENTS: Local government will have no aggregate anticipated costs or savings as the Boating Act and federal regulations govern through the state and federal legislation.

❖ OTHER PERSONS: The rule change implements no new requirement, but merely adjusts the dollar amount of damage at which an accident becomes reportable.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule change implements no new requirement, but merely adjusts the dollar amount of damage at which an accident becomes reportable.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule amendment will have no fiscal impact on businesses.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

There were many complexities with time, stress, and timeliness of board action because of having to deal with budget cuts to the state parks, and this suggests that having the rule in place in a timely manner, and the division/department being able to establish a position regarding the rule, was not possible because of the priority being the budget cuts to the division. This rule will also serve to bring the boating laws into compliance with the Boating Act passed by the Legislature in their last legislative session. (DAR NOTE: See H.B. 4 which is found at UT L 2002 Ch 200 and was effective July 1, 2002.)

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

THIS RULE IS EFFECTIVE ON: 07/01/2002

AUTHORIZED BY: Dave Morrow, Deputy Director

R651. Natural Resources, Parks and Recreation.

R651-223. Vessel Accident Reporting.

R651-223-1. Notification Required.

An operator shall immediately and by the quickest means of communication available notify the nearest state park ranger or other law enforcement officer of an accident that involves a vessel or its equipment when one of the following occurs: a person dies or disappears from a vessel under circumstances that indicate death; a person is injured and receives medical treatment beyond first aid; or property is damaged in excess of [~~\$500~~]\$2,000.

This notification shall include:

- (a) the date, time, and location of the occurrence;
- (b) the name of each person who died or disappeared;
- (c) the assigned number of the vessel; and
- (d) the name and address of the owner and operator.

R651-223-2. Other Notification.

If the operator cannot provide this notification, then another person on board shall make the notification required in rule R651-223-1.

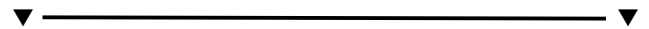
R651-223-3. Report Required.

The operator, owner, or other person on board shall submit a completed and signed Owner/Operator Boating Accident Report (PR-53A) to the division within 10 days of the accident.

KEY: accidents, boating

July 1, 2002

**Notice of Continuation January 26, 2001
73-18-13**



Natural Resources, Parks and Recreation **R651-224** Towed Devices

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE No.: 24994

FILED: 06/17/2002, 10:19

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended as the result of legislative action in the 2002 general session. H.B. 4, repealing and reenacting Section 73-18-15.1, placed certain provisions of this rule in statute. (DAR NOTE: H.B. 4 is found at UT L 2002 Ch 200 and was effective July 1, 2002.)

SUMMARY OF THE RULE OR CHANGE: This rule change puts responsibility on the operator of the boat to obey safety rules and regulations and be responsible for the flag being

displayed by the observer. It also removes the age requirement for the observer, as well as the provision regarding towing prohibitions after sunset. Both these provisions are now found in Subsection 73-18-15.1. (DAR NOTE: A corresponding proposed amendment is under DAR No. 25016 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 73-18-15.1(14)(a) and 73-18-15.1(14)(b)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The deleted provisions of this rule are now found in statute; moving them from rule to statute will create no costs or savings. The amendment at Section R651-224-3 simply clarifies an existing requirement and will create no additional cost or savings.

❖ LOCAL GOVERNMENTS: The State is responsible for safety on the waters, and there is no anticipated cost or savings to local government.

❖ OTHER PERSONS: The deleted provisions of this rule are now found in statute; moving them from rule to statute will create no costs or savings. The amendment at Section R651-224-3 simply clarifies an existing requirement and will create no additional cost or savings. Section 73-18-15.1(14)(a) and (b) is the new Boating Act State Law regarding boating and would govern this section. If a fine would be imposed, it would be in accordance with the Boating Laws and Rules of the State of Utah (Parks and Recreation).

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no way to have a numerical answer for this. If operators of vessels don't obey the law, they would receive a citation. The deleted provisions of this rule are now found in statute; moving them from rule to statute will create no costs or savings. The amendment at Section R651-224-3 simply clarifies an existing requirement and will create no additional cost or savings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule amendment cited herein will have no fiscal impact on businesses.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare. place the agency in violation of federal or state law.

There were many complexities with time, stress, and timeliness of board action because of having to deal with budget cuts to the state parks, and this suggests that having the rule in place in a timely manner, and the division/department being able to establish a position regarding the rule, was not possible because of the priority being the budget cuts to the division. This rule will also serve to bring the boating laws into compliance with the Boating Act passed by the Legislature in their last legislative session. (DAR NOTE: See H.B. 4 which is found at UT L 2002 Ch 200 and was effective July 1, 2002.)

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

THIS RULE IS EFFECTIVE ON: 07/01/2002

AUTHORIZED BY: Dave Morrow, Deputy Director

R651. Natural Resources, Parks and Recreation.

R651-224. Towed Devices.

R651-224-1. Observer Required.

The operator of a vessel which is towing a person on water skis or other devices shall be responsible for maintaining a safe course with proper lookout. The progress of the person under tow shall be reported to the vessel operator by ~~[an onboard]~~ the observer ~~[who is at least eight years of age]~~.

~~**R651-224-2. Prohibited After Sunset.**~~

~~The operator of a vessel shall not tow water skiers or other devices between sunset and sunrise.]~~

R651-224-3. Flag Required.

The operator of a vessel shall be responsible for a ~~[A]~~ flag ~~[shall]~~ to be displayed by the observer in a visible manner to other boaters in the area while the person to be towed is in the water, either preparing to be towed or finishing a tow. The flag shall be international orange at least 12 inches square and mounted on a handle.

R651-224-4. PFD to be Worn.

The operator of a vessel which is towing a person(s) on water skis or other devices shall require each person who is water skiing or using other devices to wear a United States Coast Guard approved personal flotation device (PFD), except an inflatable PFD may not be used.

R651-224-5. Capacity of Towing Vessel.

The operator of a vessel which is towing a person(s) on water skis or other devices shall use a vessel with sufficient carrying capacity, as defined by the manufacturer, for the occupant(s) onboard and the person(s) being towed.

KEY: boating, water skiing

July 1, 2002

Notice of Continuation August 7, 2001

73-18-15



Natural Resources, Parks and
Recreation
R651-225
Navigation and Steering Rules

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE No.: 24992
FILED: 06/17/2002, 10:09

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To eliminate this rule in its entirety as its provisions have been put into statute, at Subsections 73-18-15.1(1) through (13), and are no longer necessary in rule.

SUMMARY OF THE RULE OR CHANGE: Elimination of the rule on navigation and steering because it has been put into statute at Subsections 73-18-15.1(1) through (13). (DAR NOTE: A corresponding proposed repeal is under DAR No. 25011 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 73-18-15.1

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: Elimination of this rule which is now in statute will not create any costs or savings to the State budget.
- ❖ LOCAL GOVERNMENTS: Local government has no authority over state waters and therefore elimination of this rule will have no anticipated costs or savings to local government.
- ❖ OTHER PERSONS: The Navigation and Steering rules are now in statute at Subsections 73-18-15.1(1) to (13), and will be governed from that source.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Any compliance costs will be handled through the statute for the navigation and steering of vessels in the State of Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule amendment will not have a fiscal impact on businesses.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare. place the agency in violation of federal or state law.

There were many complexities with time, stress, and timeliness of board action because of having to deal with budget cuts to the state parks, and this suggests that having the rule in place in a timely manner, and the division/department being able to establish a position regarding the rule, was not possible because of the priority being the budget cuts to the division. This rule will also serve to bring the boating laws into compliance with the Boating Act passed by the Legislature in their last legislative session. (DAR NOTE: See H.B. 4 which is found at UT L 2002 Ch 200 and was effective July 1, 2002.)

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

THIS RULE IS EFFECTIVE ON: 07/01/2002

AUTHORIZED BY: Dave Morrow, Deputy Director

R651. Natural Resources, Parks and Recreation.

~~**R651-225. Navigation and Steering Rules.**~~

~~**R651-225-1. Rules of the Road.**~~

- ~~— (1) The operator of a vessel shall maintain a proper lookout by sight and hearing at all times to avoid the risk of collision.~~
- ~~— (2) When two motorboats approach each other where there is risk of collision, each shall alter course to the starboard and pass on the port side of the other.~~
- ~~— (3) When two motorboats are crossing paths and are at risk of a collision, the vessel which has the other vessel on its starboard side shall keep out of the way and yield right of way if necessary.~~
- ~~— (4) The operator of any vessel overtaking any other vessel shall keep out of the way of the vessel being overtaken.~~
- ~~— (5) A motorboat underway shall keep out of the way of sailboats and vessels not under command.~~
- ~~— (6) A sailboat underway shall keep out of the way of vessels not under command.~~
- ~~— (7) Where one of two vessels is to keep out of the way, the other vessel operator shall maintain his course and speed unless it becomes apparent the other vessel is not taking the appropriate action.~~
- ~~— (8) In narrow channels vessels underway shall keep to the right of the middle of the channel.~~
- ~~— (9) The operator of a vessel shall proceed at a safe speed at all times so that he can take proper and effective action to avoid collision and at an appropriate distance from the prevailing circumstances or conditions.~~
- ~~— (10) When two sailboats are approaching one another so as to involve risk of collision, one of them shall keep out of the way of the other as follows:~~
 - ~~— (a) when each has the wind on a different side, the vessel which has the wind on the port side shall keep out of the way of the other;~~
 - ~~— (b) when both have the wind on the same side, the vessel which is to the windward shall keep out of the way of the vessel which is to leeward; and~~
 - ~~— (c) if the operator of a vessel with the wind on the port side sees a vessel to windward and cannot determine with certainty whether the other vessel has the wind on the port or on the starboard side, the operator shall keep out of way of the other vessel.~~

— ~~Note: For the purpose of Rule R651-225-1(10), the windward side shall be the side opposite that on which the mainsail is carried.~~

~~R651-225-2. Speed and Proximity.~~

— ~~The operator of any vessel shall not exceed a wakeless speed when within 150 feet of: another vessel; a person in or floating on the water; a water skier (except those he is towing); a shore fisherman; a launching ramp; a dock; or a designated swimming area.~~

~~R651-225-3. Wake Damage.~~

— ~~The operator of a motorboat is responsible for any damage and/or injury caused by the wake produced by his vessel.~~

~~R651-225-4. Operator and Passenger Seating.~~

— ~~(1) The operator of a motorboat less than 16 feet in length shall not exceed a wakeless speed while any person is riding upon the~~

~~bow decking, gunwales, transom, seatbacks, or motor cover. This rule also applies to motorboats 16 feet to 65 feet in length unless the vessel is designed or equipped with adequate safeguards such as railings, which would prevent a person from falling overboard.~~

— ~~(2) If a person is riding upon the bow decking of a motorboat which does not have designed seating for passengers, the person shall straddle one of the upright supports of the bow rail and must not block the vision of the operator.~~

~~KEY: boating~~

~~July 1, 2002~~

**~~Notice of Continuation November 13, 2001
73-18-15.1]~~**



End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the 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 (1998).

Administrative Services, Risk Management **R37-1** Risk Management General Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25054
FILED: 06/28/2002, 08:40

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 63A-4-101(2)(b) states that the risk manager shall "recommend that the executive director make rules..." The statute then describes in detail the types of rules to be made including: establishing underwriting and risk control standards, risks to be covered by the risk management fund, the claims making process and procedure, deductibles, process for dealing with disputes, records management, etc. The rules have been established to accomplish this requirement of statute and specifically address each of the requirements listed in the statute.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been virtually no comments received either supporting or opposing this rule since it was last reviewed for continuation. The only inquiries about the rule has been specific questions from client agencies requesting clarification or further information on how the rule applies to their unique situation.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule needs to be continued in order that the Division of Risk Management can meet the requirements of statute and ensure that the Risk Management Fund is properly and legally administered. Without this rule, the staff of the Division of Risk management would be unable to address the various insurance concerns of

client agencies, pay claims, or address loss control issues. Because many of Risk Management's activities impact on the public (claims issues), on state agencies, public schools, colleges and universities, it is necessary that administrative rules be established and followed. This rule provides the necessary structure to allow for efficient and effective operation of a full service risk management program.

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

ADMINISTRATIVE SERVICES
RISK MANAGEMENT
Room 5120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Mike Sanders at the above address, by phone at 801-538-9560, by FAX at 801-538-9597, or by Internet E-mail at msanders@utah.gov

AUTHORIZED BY: Camille Anthony, Executive Director

EFFECTIVE: 06/28/2002



Administrative Services, Risk Management **R37-2** Risk Management State Workers' Compensation Insurance Administration

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25055
FILED: 06/28/2002, 08:48

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under the statutory authority granted to the Risk Manager under Subsection 63A-4-101(2) to recommend to the Executive Director of the Department of Administrative Services that rules be promulgated to address the purchase of insurance and other actions necessary to carry the duties of the division and to administer insurance programs for client agencies. The Executive Director of the Department of Administrative Services is empowered by Subsection 63A-1-110(2) to enact administrative rules for the various divisions of the department.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received on 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 provides client agencies with the specific requirements and expectations of the Division of Risk Management with regard to Workers' Compensation Insurance coverage. The rule establishes what the clients are expected to do in order to access this coverage; and establishes Risk Management's authority to allocate costs and to spend money in pursuit of the goals of this program. The rule also allows the establishment of a preferred provider system for medical services. The rule needs to remain in place in order that the Workers' Compensation program can continue to provide service at the lowest cost possible for client agencies.

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

ADMINISTRATIVE SERVICES
RISK MANAGEMENT
Room 5120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Mike Sanders at the above address, by phone at 801-538-9560, by FAX at 801-538-9597, or by Internet E-mail at msanders@utah.gov

AUTHORIZED BY: Camille Anthony, Executive Director

EFFECTIVE: 06/28/2002



**Administrative Services, Risk Management
R37-3
Risk Management Adjudicative Proceedings**

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25056
FILED: 06/28/2002, 09:04

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under the statutory authority granted to the Risk Manager under Subsection 63A-4-101(2) to recommend to the Executive Director of the Department of Administrative Services that rules be promulgated to address underwriting and other standards, actions, or requirements necessary to carry out the duties of the division.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is required by the Utah Administrative Procedures Act (Title 63, Chapter 46b) and outlines how formal adjudicative proceedings involving the Division of Risk Management are to be done. Continuation of this rule is required in order to comply with the Administrative Procedures Act.

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

ADMINISTRATIVE SERVICES
RISK MANAGEMENT
Room 5120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Mike Sanders at the above address, by phone at 801-538-9560, by FAX at 801-538-9597, or by Internet E-mail at msanders@utah.gov

AUTHORIZED BY: Camille Anthony, Executive Director

EFFECTIVE: 06/28/2002



Attorney General, Administration
R105-2
 Records Access and Management

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

DAR FILE No.: 25007
 FILED: 06/20/2002, 14:51

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsections 63-2-204(2) and 63-2-904(2). The first subsection referenced allows a governmental entity to make rules in accordance with Title 63, Chapter 46a (Utah Administrative Rulemaking Act) specifying where and to whom requests for access shall be directed. The second subsection allows a governmental entity that includes divisions to specify at which level the requirements specified in this chapter shall be undertaken.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is critical for the public to understand where requests for access should be directed so this rule should be continued.

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

ATTORNEY GENERAL
 ADMINISTRATION
 Room 236 STATE CAPITOL
 350 N STATE ST
 SALT LAKE CITY UT 84114-1103, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Mark E. Burns at the above address, by phone at 801-366-0188, by FAX at 801-366-0352, or by Internet E-mail at markburns@utah.gov

AUTHORIZED BY: Ray Hintze, Chief Civil Deputy

EFFECTIVE: 06/20/2002



Commerce, Real Estate
R162-9
 Continuing Education

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

DAR FILE No.: 25028
 FILED: 06/26/2002, 08:50

**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: Utah Code Subsection 61-2-5.5(1)(a)(ii) authorizes the Real Estate Commission to make rules for the administration of the postlicensing education required by the chapter.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The only written comments that were received since the last five-year review were received prior to a meeting held to obtain input from the real estate school providers on the subject of distance education. The comments generally supported the concept of giving continuing education credit for distance education although there was disagreement about the mechanics of course approval. The Real Estate Commission discussed the written comments and the input received at this meeting on and off for over a year and ultimately amended the rule effective 06/20/2002 to allow continuing education credit for distance education courses under certain circumstances. (DAR NOTE: The proposed amendment that was made effective on 06/20/2002 was published in the May 15, 2002, issue of the Utah State Bulletin under DAR No. 24731.)

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary to maintain the quality of continuing education courses and instructors to assure that licensees stay current in their knowledge of real estate.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at swismer@utah.gov

AUTHORIZED BY: Dexter Bell, Director

EFFECTIVE: 06/26/2002



Corrections, Administration
R251-710
 Search

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

DAR FILE No.: 24997
 FILED: 06/19/2002, 09:20

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 64-13-14(1) directs the Department to maintain and operate secure correctional facilities for the incarceration of offenders. Subsection 64-13-17(2) states that persons visiting the institution may be required to submit to a search or inspection of their persons and properties as a condition of visitation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments 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 is necessary in order to maintain the safety and security of correctional facilities.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Ginny L Duncan at the above address, by phone at 801-545-5722, by FAX at 801-545-5523, or by Internet E-mail at gduncan@utah.gov

AUTHORIZED BY: Michael P. Chabries, Executive Director

EFFECTIVE: 06/19/2002



Health, Health Care Financing,
 Coverage and Reimbursement Policy
R414-1A
 Medicaid Policy for Experimental or
 Unproven Medical Practices

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

DAR FILE No.: 25026
 FILED: 06/25/2002, 16:37

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Sections 26-1-5, 26-1-15, and 26-18-6, and by Subsections 26-18-3(2) and 26-18-5(4). In addition, Section 26-18-2.3 mandates that the Division of Health Care Financing operate the Medicaid program in an efficient, economical manner using cost-containment methods wherever possible. These give the Division the authority to determine what constitutes experimental or unproven medical practices and to exclude them as covered Medicaid services.

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 formal written comments have been received. In some cases when an experimental procedure is denied prior authorization or payment, informal verbal comments to the effect that experimental procedures should be covered 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 is important as a utilization and appropriateness of service control method. It is particularly important as a cost-savings tool because many experimental procedures are very expensive. Medicaid's charge is to direct limited resources to proven, cost-effective medical care for as many eligible persons as possible, rather than to further medical research. As a result, the Department disagrees with the informal comments that experimental or unproven medical practices should be a covered benefit in the Medicaid program. This rule was last amended in September of 1997 when one obsolete section was repealed and several nonsubstantive language changes were adopted.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HEALTH
 HEALTH CARE FINANCING,
 COVERAGE AND REIMBURSEMENT POLICY
 CANNON HEALTH BLDG
 288 N 1460 W
 SALT LAKE CITY UT 84116-3231, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Ross Martin at the above address, by phone at 801-538-6592, by FAX at 801-538-6099, or by Internet E-mail at rmartin@utah.gov

AUTHORIZED BY: Rod Betit, Executive Director

EFFECTIVE: 06/25/2002



Health, Health Care Financing,
Coverage and Reimbursement Policy

R414-60

Medicaid Policy for Pharmacy
Copayment Procedures

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

DAR FILE NO.: 25029
FILED: 06/26/2002, 16:25

**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: Sections 26-1-5 and 26-18-3 authorize rulemaking by the Department that assures that the State Medicaid program conforms with applicable federal rules and regulations and is run in an efficient and economical manner. 42 CFR 447.15 and 447.50, which are incorporated by reference in this rule, permit states to require cost sharing of certain recipients and establish liability for cost sharing on those recipients. Copayments are an effective control against inappropriate utilization of the pharmacy benefit in the Medicaid program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Comments from recipients point out that cost sharing financially stresses Medicaid recipients. Providers have commented about the difficulty of collecting copays and that the copays are not large enough to control utilization.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Copayments are minimal as required by federal law, and pregnant women, children, and residents of institutions are exempt from copayments by federal law. Cost sharing helps balance the Medicaid budget and has been shown to be an effective control on utilization so this rule should be continued. This rule has not been amended since the last five-year review.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ross Martin at the above address, by phone at 801-538-6592,
by FAX at 801-538-6099, or by Internet E-mail at
rmartin@utah.gov

AUTHORIZED BY: Rod Betit, Executive Director

EFFECTIVE: 06/26/2002



Health, Epidemiology and Laboratory
Services, Laboratory Services

R438-12

Rules for Authorization of Individuals
Other Than Physicians, Registered
Nurses, or Practical Nurses to Withdraw
Blood for Alcoholic or Drug
Determinations When Requested by a
Peace Officer and for Issuance of
Permits to Such Individuals

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

DAR FILE NO.: 25060
FILED: 07/01/2002, 11:44

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 26-1-30(2)(s) requires that the Department of Health "establish qualifications for individuals permitted to draw blood pursuant to Section 41-6-44.10. . . ." This rule sets those qualifications.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments supporting or opposing the rule were received since the last five-year review of this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Keeping impaired drivers from public roads is an important public policy. This rule supports that policy by establishing requirements for individuals, other than physicians and nurses, who withdraw blood that will be tested for alcohol or drugs. The rule also includes the requirements for issuance of permits to such person who withdraw blood and should be continued.

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

HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES,
LABORATORY SERVICES
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

David Mendenhall at the above address, by phone at 801-584-8470, by FAX at 801-584-8501, or by Internet E-mail at davidmendenhall@utah.gov

AUTHORIZED BY: Rod Betit, Executive Director

EFFECTIVE: 07/01/2002



Health, Epidemiology and Laboratory
Services, Laboratory Improvement

R444-11

Rules for Approval to Perform Blood
Alcohol Examinations

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

DAR FILE No.: 25061
FILED: 07/01/2002, 12:13

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 26-1-30(2)(m) authorizes the Department to set and enforce standards for laboratory services when the purpose of the service is to protect public health. Standardizing testing for alcohol in blood is necessary to protect the public health and enforce driving under the influence laws.

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 by the Department since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of this rule is to provide standards for the approval of laboratories that conduct examination of blood for alcohol levels and should be continued. These standards include basic laboratory requirements that are consistent with good clinical laboratory practices. Consistent and accurate testing of blood for alcohol levels is imperative if the laws against driving while under the influence are to be fairly and effectively enforced.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

David Mendenhall at the above address, by phone at 801-584-8470, by FAX at 801-584-8501, or by Internet E-mail at davidmendenhall@utah.gov

AUTHORIZED BY: Rod Betit, Executive Director

EFFECTIVE: 07/01/2002



Human Services, Substance Abuse

R544-4

Utah Standards for Approval of Alcohol
and Drug Educational Programs for
Court-Referred DUI Offenders

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

DAR FILE No.: 25018
FILED: 06/24/2002, 11:52

**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: These standards are promulgated by the Utah Department of Human Services through the Division of Substance Abuse (hereinafter referred to as "Division") as authorized by Sections 41-6-44, 62A-8-103, 62A-8-107, 17A-3-701, 62A-8-301-303, and 76-5-207.

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 or complaints have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule outlines the standards for providers of the state-approved driving under the influence (DUI) educational class. No complaints have been received about this rule. The Division of Substance Abuse does not recommend any changes at this time. Also, in this year's legislative session, many legislators supported a bill that would combine the Division of Substance Abuse with the Division of Mental Health. Although the bill failed, the issue was placed on an interim study list (item #72 on the Master Study Resolution "Consolidation of Health Services-to study whether to combine the Division of Substance Abuse with the Division of Mental Health). If the interim study recommends substantive changes to the Division of Substance Abuse, it is likely that the rules would have to be revised. In light of this ongoing discussion, the Division of Substance Abuse has determined that the public would best be served if the existing rule is continued.

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

HUMAN SERVICES
SUBSTANCE ABUSE
Room 201
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent Kelsey at the above address, by phone at 801-538-4305, by FAX at 801-538-4696, or by Internet E-mail at bkelsey@utah.gov

AUTHORIZED BY: Patrick Fleming, Director

EFFECTIVE: 06/24/2002



Human Services, Substance Abuse
R544-5

Alcohol Training and Education
Seminar Rules of Administration

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

DAR FILE No.: 25019
FILED: 06/24/2002, 12:01

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is adopted under the authority of Section 62A-8-103.5 authorizing the Division of Substance Abuse to administer the Alcohol Training and Education Seminar Program. This rule is necessary to set forth the process for certifying providers, and approving the curriculum.

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 or complaints have been received since this rule was last reviewed.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Division of Substance Abuse recommends no changes to this rule at this time. Also, in this year's legislative session, many legislators supported a bill that would combine the Division of Substance Abuse with the Division of Mental Health. Although the bill failed, the issue was placed on an interim study list (item #72 on the Master Study Resolution "Consolidation of Health Services-to study whether to combine the Division of Substance Abuse with the Division of Mental Health). If the interim study recommends substantive changes to the Division of Substance Abuse, it is

likely that the rules would have to be revised. In light of this ongoing discussion, the Division of Substance Abuse has determined that the public would best be served if the existing rule is continued.

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

HUMAN SERVICES
SUBSTANCE ABUSE
Room 201
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent Kelsey at the above address, by phone at 801-538-4305, by FAX at 801-538-4696, or by Internet E-mail at bkelsey@utah.gov

AUTHORIZED BY: Patrick Fleming, Director

EFFECTIVE: 06/24/2002



Natural Resources, Wildlife Resources
R657-18

Wood Products on Division of Wildlife
Resources Lands

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

DAR FILE No.: 25006
FILED: 06/20/2002, 13:57

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 23-14-8 authorizes the director of the Division of Wildlife Resources full control of all property acquired and held for the purposes specified in this title.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division of Wildlife Resources and the Wildlife Board have not received written comments, either in support or opposition to Rule R657-18. Written comments received in opposition to the rule are resolved using existing policies and procedures or the issue is placed on the Regional Advisory Council's and Wildlife Board's agenda for review and discussion during the review process for taking public input. The public is welcome to view the Regional Advisory Council minutes, Wildlife Board minutes, and administrative record for this rule at the Division of Wildlife Resources.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of Rule R657-18 is necessary to provide the standards prescribing the use of wood products on division lands, and is necessary for continued success of the program.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiesundell@utah.gov

AUTHORIZED BY: Kevin Conway, Director

EFFECTIVE: 06/20/2002

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of Rule R657-28 is necessary to provide the application procedures and administration of rights-of-way, leases, and special use permits on division land.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiesundell@utah.gov

AUTHORIZED BY: Kevin Conway, Director

EFFECTIVE: 06/20/2002

Natural Resources, Wildlife Resources

R657-28

Use of Division Lands - Rights-of-Way, Leases and Special Use Permits

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25005
FILED: 06/20/2002, 13:55

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 23-14-8 authorizes the director of the Division of Wildlife Resources full control of all property acquired and held for the purposes specified in this title.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division of Wildlife Resources and the Wildlife Board have not received written comments, either in support or opposition to Rule R657-28. Written comments received in opposition to the rule are resolved using existing policies and procedures or the issue is placed on the Regional Advisory Council's and Wildlife Board's agenda for review and discussion during the review process for taking public input. The public is welcome to view the Regional Advisory Council minutes, Wildlife Board minutes, and administrative record for this rule at the Division of Wildlife Resources.

Public Safety, Driver License

R708-34

Medical Waivers for Intrastate Commercial Driving Privileges

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25008
FILED: 06/21/2002, 13:17

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53-3-303.5(2)(a) says the Driver License Medical Review Board shall establish fitness standards including provisions for a waiver of specified federal driver's physical qualifications under 49 CFR 391.41, for intrastate commercial driving privileges.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments 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 should be continued so minimum federal fitness standards dealing with physical, mental, and emotional health set forth in the Federal Motor Carrier Safety Regulations can be met and still be in compliance when a waiver is issued.

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

PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY UT 84119-5595, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Vinn Roos at the above address, by phone at 801-965-4456, by FAX at 801-964-4482, or by Internet E-mail at vroos@utah.gov

AUTHORIZED BY: Judy Hamaker Mann, Director

EFFECTIVE: 06/21/2002

▼ ————— ▼

Public Safety, Fire Marshal **R710-3** Assisted Living Facilities

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 24996
FILED: 06/19/2002, 08:33

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53-7-204 specifically authorizes the enactment of rules for assisted living facilities to establish minimum standards for the prevention of fire and for the protection of life and property of the elderly or disabled in this type of health care establishment.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R710-3 was first enacted April 15, 1987. Since the last five-year review, this rule has been amended seven times with the last amendment going into effect on January 2, 2002. Since the last five-year review, there have been five letters received on proposed amendments. Two letters were received in April 1997 with regard to the proposed staff-to-client ratio and the need for a fire sprinkler system in Limited Care Facilities, and the usage of dead bolts, chains, or hasps on the exit doors of this type of facility. The other three letters were received in the latter part of 2000 and were with regard to the proposed variance to allow terminally-ill residents to be granted a limited variance for hospice care to stay in the assisted living facility in an end-of-life care circumstance.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R710-3 is the rule that provides a minimum degree of fire and life safety for those

people who reside in assisted living facilities that are provided a protected living arrangement, plus nursing care and services, on a daily basis for clients who are unable to fully maintain an independent life. The above-stated letters received by the Fire Prevention Board assisted in the modification of the proposed rule and provided the Board with additional insight to resolve these concerns in everyone's best interest. This rule has tremendous impact on fire and life safety in facilities where people are limited by mental or physical impairments and require supervision and nursing care to continue to maintain a productive life. Continuation of the rule is a must for life safety in the State of Utah.

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

PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent Hallada at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

AUTHORIZED BY: Gary A. Wise, State Fire Marshal

EFFECTIVE: 06/19/2002

▼ ————— ▼

School and Institutional Trust Lands, Administration **R850-1** Definition of Terms

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25030
FILED: 06/27/2002, 10:54

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53C-1-302(1)(a)(ii) authorizes the director of the School and Institutional Trust Lands Administration to provide definitions which apply to all rules promulgated by the agency.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received concerning this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS

IN OPPOSITION TO THE RULE, IF ANY: By means of this rule, the School and Institutional Trust Lands Administration is able to clarify terminology used through the agency's rules. If the agency were to eliminate this rule, each individual program rule would need to be revised in order to clarify program-related terms for the public and users of the trust lands.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
Room 500
675 E 500 S
SALT LAKE CITY UT 84102-2818, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kevin S. Carter at the above address, by phone at 801-538-5160, by FAX at 801-355-0922, or by Internet E-mail at kevincarter@utah.gov

AUTHORIZED BY: Kevin S. Carter, Deputy Director

EFFECTIVE: 06/27/2002

▼ ————— ▼

**School and Institutional Trust Lands,
Administration
R850-2
State Land Management Objectives**

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

DAR FILE No.: 25045
FILED: 06/27/2002, 14:37

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53C-1-302 and Subsection 53C-204(1) authorize the director of the School and Institutional Trust Lands Administration and the Board of Trustees to prescribe the general land management objectives for school and institutional trust lands. This rule presents those objectives.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received concerning this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is important for the general public and users of trust lands to know what the lands were designated for, and that the agency has a fiduciary duty to the trust beneficiaries with regard to the disposition of these

lands. This rule states the agency's objectives for fulfilling that fiduciary duty and should be continued.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
Room 500
675 E 500 S
SALT LAKE CITY UT 84102-2818, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kevin S. Carter at the above address, by phone at 801-538-5160, by FAX at 801-355-0922, or by Internet E-mail at kevincarter@utah.gov

AUTHORIZED BY: Kevin S. Carter, Deputy Director

EFFECTIVE: 06/27/2002

▼ ————— ▼

**School and Institutional Trust Lands,
Administration
R850-3
Applicant Qualifications, Application
Forms, and Application Processing**

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

DAR FILE No.: 25043
FILED: 06/27/2002, 14:29

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53C-2-404 and Subsection 53C-1-302(1)(a)(ii) authorize the director of the School and Institutional Trust Lands Administration to prescribe the application requirements and the form of application for the use or acquisition of trust lands. This rule sets forth those requirements.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received concerning this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In order for the School and Institutional Trust Lands Administration to accept applications from prospective trust land users, there must be an orderly and clearly defined process in place. This rule sets forth the requirements the applicant must meet in order to be qualified as a user of trust lands and should be continued.

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

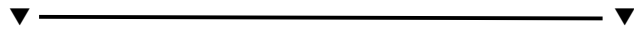
SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
Room 500
675 E 500 S
SALT LAKE CITY UT 84102-2818, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kevin S. Carter at the above address, by phone at 801-538-5160, by FAX at 801-355-0922, or by Internet E-mail at kevincarter@utah.gov

AUTHORIZED BY: Kevin S. Carter, Deputy Director

EFFECTIVE: 06/27/2002



School and Institutional Trust Lands,
Administration
R850-4
Application Fees and Assessments

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

DAR FILE No.: 25041
FILED: 06/27/2002, 14:22

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53C-1-302(1)(a)(ii) authorizes the director of the School and Institutional Trust Lands Administration to establish fees.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received concerning this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The assessment of fees to cover the costs of doing business is a necessary part of fulfilling the agency's fiduciary responsibility in behalf of the various trusts. Fees are typically established to recover a small portion of administrative costs. This rule allows us to establish those fees pursuant to policy set by the Board of Trustees and should be continued.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION

Room 500
675 E 500 S
SALT LAKE CITY UT 84102-2818, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kevin S. Carter at the above address, by phone at 801-538-5160, by FAX at 801-355-0922, or by Internet E-mail at kevincarter@utah.gov

AUTHORIZED BY: Kevin S. Carter, Deputy Director

EFFECTIVE: 06/27/2002



School and Institutional Trust Lands,
Administration
R850-5
Payments, Royalties, Audits, and
Reinstatements

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

DAR FILE No.: 25042
FILED: 06/27/2002, 14:26

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53C-1-302(1)(a)(ii) authorizes the director of the School and Institutional Trust Lands Administration to prescribe procedures and requirements for payments, royalties and audits. This rule sets forth those procedures and requirements.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received concerning this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In the course of leasing and selling trust assets, procedures need to be in place which outline requirements for payments of rental, royalties, etc. Guidelines also need to be established for the auditing of leases in order to ensure that the trust assets are being protected and the trust beneficiaries are receiving full value. This rule is needed to set forth the guidelines and procedures necessary for protecting the assets of the various beneficiaries.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
Room 500
675 E 500 S
SALT LAKE CITY UT 84102-2818, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kevin S. Carter at the above address, by phone at 801-538-5160, by FAX at 801-355-0922, or by Internet E-mail at kevincarter@utah.gov

AUTHORIZED BY: Kevin S. Carter, Deputy Director

EFFECTIVE: 06/27/2002

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
Room 500
675 E 500 S
SALT LAKE CITY UT 84102-2818, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kevin S. Carter at the above address, by phone at 801-538-5160, by FAX at 801-355-0922, or by Internet E-mail at kevincarter@utah.gov

AUTHORIZED BY: Kevin S. Carter, Deputy Director

EFFECTIVE: 06/27/2002

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**School and Institutional Trust Lands,
Administration
R850-6
Government Records Access and
Management**

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

DAR FILE No.: 25040
FILED: 06/27/2002, 14:17

**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: Sections 63-2-204, 63-2-603, and 63-2-904 set out procedures for appropriate access to agency records. Subsection 53C-1-201(3)(a)(i)(A) and Section 53C-2-102 allow the Director of the School and Institutional Trust Lands Administration to adopt protected and confidential information rules regarding information provided to the agency by a lessee, or regarding business proposals submitted to the agency.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Current statute requires that the agency have rules in place that deal with procedures for access to agency records. This rule provides a mechanism for such access and should be continued.

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**School and Institutional Trust Lands,
Administration
R850-20
Mineral Resources**

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

DAR FILE No.: 25048
FILED: 06/27/2002, 14:51

**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: Subsections 53C-1-302(1)(a)(ii) and 53C-2-402(1) authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the issuance of mineral leases and management of trust-owned lands and mineral resources.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received concerning this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The School and Institutional Trust Lands Administration manages approximately 4,700,000 acres of subsurface mineral rights located throughout the State of Utah. Approximately 1,400,000 acres are currently under lease to third parties for mineral development; and this development consistently provides over 70% of the agency's revenue. Rules governing the management and use of trust lands, particularly the mineral resource rule, are critical to our continued success in managing these resources for the benefit of the beneficiaries. In addition, these rules act as a guide for customers by providing a consistent set of procedures as to how business is conducted by the agency.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
Room 500
675 E 500 S
SALT LAKE CITY UT 84102-2818, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

LaVonne Garrison at the above address, by phone at 801-538-5100, by FAX at 801-355-0922, or by Internet E-mail at lavonnegarrison@utah.gov

AUTHORIZED BY: Kevin S. Carter, Deputy Director

EFFECTIVE: 06/27/2002

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
Room 500
675 E 500 S
SALT LAKE CITY UT 84102-2818, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kim S. Christy at the above address, by phone at 801-538-5183, by FAX at 801-355-0922, or by Internet E-mail at kimchristy@utah.gov

AUTHORIZED BY: Kevin S. Carter, Deputy Director

EFFECTIVE: 06/27/2002

▼ ————— ▼

**School and Institutional Trust Lands,
Administration
R850-30
Special Use Leases**

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

DAR FILE No.: 25035
FILED: 06/27/2002, 11:21

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53C-1-302(1)(a)(ii) generally, and Subsection 53C-4-101-(1) specifically, authorize the director of the School and Institutional Trust Lands Administration to make "rules for the sale, exchange, lease or other disposition or conveyance of trust lands, including procedures for determining fair market value of those lands." The issuance of special use leases is specifically authorized in the statute.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The School and Institutional Trust Lands Administration manages a vast surface estate for the benefit of the trust beneficiaries. Statute specifically requires rules outlining procedures for the issuance of special use leases on trust lands. This rule provides the agency and public with guidelines for the lease process that is critical to the successful management of the surface estate and should be continued.

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**School and Institutional Trust Lands,
Administration
R850-40
Easements**

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

DAR FILE No.: 25034
FILED: 06/27/2002, 11:20

**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: Sections 53C-1-302 and 53C-4-203 authorize the director of the School and Institutional Trust Lands Administration to establish rules for the issuance of easements on, through, and over any trust lands, and to establish price schedules for this use. This rule fulfills those requirements.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received concerning this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The School and Institutional Trust Lands Administration manages a vast surface estate for the benefit of the beneficiaries. There are multiple uses for the surface estate, one of which is the designation of easements. Statute specifically requires that the agency provide rules for the issuance of easements across trust lands and to establish price schedules at fair market value. This rule is necessary in order to establish the process whereby easements may be issued at fair market value when they are in the best interests of the trust beneficiaries and should be continued.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
Room 500
675 E 500 S
SALT LAKE CITY UT 84102-2818, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kim S. Christy at the above address, by phone at 801-538-5183, by FAX at 801-355-0922, or by Internet E-mail at kimchristy@utah.gov

AUTHORIZED BY: Kevin S. Carter, Deputy Director

EFFECTIVE: 06/27/2002

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
Room 500
675 E 500 S
SALT LAKE CITY UT 84102-2818, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kim S. Christy at the above address, by phone at 801-538-5183, by FAX at 801-355-0922, or by Internet E-mail at kimchristy@utah.gov

AUTHORIZED BY: Kevin S. Carter, Deputy Director

EFFECTIVE: 06/27/2002

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**School and Institutional Trust Lands,
Administration
R850-50
Range Management**

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

DAR FILE No.: 25033
FILED: 06/27/2002, 11:18

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53C-1-302(1)(a)(ii) and Section 53C-5-102 authorize the director of the School and Institutional Trust Lands Administration to establish rules prescribing standards and conditions for utilization of forage and related development of range resources on trust lands.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received concerning this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Without the authorization to issue grazing permits, the permanent fund of the schools and other institutions that benefit from the lands managed by this agency would forego the opportunity to receive revenues which average approximately \$400,000 per year. It would also eliminate a resource for local ranchers to utilize in their agricultural operations. This rule provides for the grazing of livestock on trust lands, thereby benefiting not only the permanent funds of beneficiaries, but the local economies as well and should be continued.

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**School and Institutional Trust Lands,
Administration
R850-60
Cultural Resources**

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

DAR FILE No.: 25032
FILED: 06/27/2002, 11:03

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 9-8-404 requires that before expending any state funds or approving any undertakings, each state agency must take into account the effect of the undertaking on anything included in or eligible for inclusion in the National or State Registers of Historic Places, and allow the state historic preservation officer a reasonable opportunity to comment on the undertaking or expenditure. Subsections 53C-1-302(1)(a)(ii) and 53C-2-201(1)(a) authorize the director of the School and Institutional Trust Lands Administration to prescribe the management of cultural resources on trust lands. This rule provides the mechanism for compliance.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received concerning this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The School and Institutional Trust Lands Administration must manage the cultural resources on trust lands in compliance with Section 9-8-404 and to provide a process for the issuance of permits for archaeological surveys and excavations on trust lands. This

rule provides the guidelines and process for the protection of these resources and should be continued.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
Room 500
675 E 500 S
SALT LAKE CITY UT 84102-2818, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Kim S. Christy at the above address, by phone at 801-538-5183, by FAX at 801-355-0922, or by Internet E-mail at kimchristy@utah.gov

AUTHORIZED BY: Kevin S. Carter, Deputy Director

EFFECTIVE: 06/27/2002



School and Institutional Trust Lands,
Administration
R850-80
Sale of Trust Lands

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

DAR FILE NO.: 25031
FILED: 06/27/2002, 11:00

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53C-1-302(1)(a)(ii) in general, and Subsection 53C-4-101(1) specifically, authorize the director of the School and Institutional Trust Lands Administration to prescribe the terms and conditions for the sale of trust lands. This rule sets out the procedures for the sale of trust lands.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received concerning this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The School and Institutional Trust Lands Administration has the fiduciary responsibility to successfully manage the lands that are held in trust for the various beneficiaries and to receive full market value for the use or sale of those lands. This rule sets forth the procedures and guidelines for determining if/when it is in the best interests of the beneficiaries to sell portions of the surface estate and

the procedures for establishing and receiving fair market value for those lands and should be continued.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
Room 500
675 E 500 S
SALT LAKE CITY UT 84102-2818, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Kim S. Christy at the above address, by phone at 801-538-5183, by FAX at 801-355-0922, or by Internet E-mail at kimchristy@utah.gov

AUTHORIZED BY: Kevin S. Carter, Deputy Director

EFFECTIVE: 06/27/2002



Transportation, Motor Carrier, Ports of
Entry
R912-3
Restriction of Truck Traffic on SR-128 -
Legal and Permitted Vehicles

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

DAR FILE NO.: 25023
FILED: 06/25/2002, 14:31

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 72-7-408 allows the Department of Transportation to restrict travel on certain roads when necessary to protect public safety.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received about this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The safety reasons for requiring this restriction are still in force so the rule should be continued.

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

TRANSPORTATION
MOTOR CARRIER, PORTS OF ENTRY

CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY UT 84119-5998, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at jbeadles@utah.gov

AUTHORIZED BY: John R. Njord, Executive Director

EFFECTIVE: 06/25/2002

▼ ————— ▼

Transportation, Operations, Aeronautics **R914-1**

Rules and Regulations of the Utah State Aeronautical Committee

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25024
FILED: 06/25/2002, 14:35

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 72-10-103 sets up an advisory committee and requires that the department set up certain rules regarding it.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The statutory obligation to set out rules still exists so this rule should be continued.

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

TRANSPORTATION
OPERATIONS, AERONAUTICS
135 N 2400 W
SALT LAKE CITY UT 84116-2982, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at jbeadles@utah.gov

AUTHORIZED BY: John R. Njord, Executive Director

EFFECTIVE: 06/25/2002

▼ ————— ▼

Transportation, Operations, Aeronautics **R914-2**

Safety Rules and Procedures for Aircraft Operations on Roads

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25025
FILED: 06/25/2002, 14:41

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 72-10-118 gives the Department of Transportation authority to regulate aircraft operations and this rule sets out procedures to carry out that authority.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received over the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is still needed to carry out the need to regulate aircraft operations as set forth in statute.

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

TRANSPORTATION
OPERATIONS, AERONAUTICS
135 N 2400 W
SALT LAKE CITY UT 84116-2982, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at jbeadles@utah.gov

AUTHORIZED BY: John R. Njord, Executive Director

EFFECTIVE: 06/25/2002

Transportation, Operations, Traffic and Safety
R920-1
Manual of Uniform Traffic Control Devices

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25021
FILED: 06/25/2002, 14:12

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 72-6-102 requires the Department of Transportation to adopt a manual for construction and maintenance specifications.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received on this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is required by law and should be continued.

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

TRANSPORTATION
OPERATIONS, TRAFFIC AND SAFETY
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY UT 84119-5998, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at jbeadles@utah.gov

AUTHORIZED BY: John R. Njord, Executive Director

EFFECTIVE: 06/25/2002



Transportation, Operations, Traffic and Safety
R920-2
Traffic Control Systems for Railroad-Highway Grade Crossings

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25022
FILED: 06/25/2002, 14:19

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 72-6-115 requires the Utah Department of Transportation (UDOT) to specify control systems, like stop signs and arms for railroad crossings.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary to carry out UDOT's statutory duty and should be continued.

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

TRANSPORTATION
OPERATIONS, TRAFFIC AND SAFETY
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY UT 84119-5998, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at jbeadles@utah.gov

AUTHORIZED BY: John R. Njord, Executive Director

EFFECTIVE: 06/25/2002



Workforce Services, Administration
R982-101
Americans With Disabilities Act
Complaint Procedure.

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25036
FILED: 06/27/2002, 13:44

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 35A-1-104

authorizes the Department to make rules to carry out its responsibilities, and federal law requires rules on Americans With Disabilities Act (ADA) complaints.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department receives federal funding for several programs administered by the Department. The funding is contingent upon following federal law and specifically requires the Department provide for a procedure for ADA complaints so this rule should be continued. Upon reviewing this rule, the Department noticed that some of the language is outdated and plans to file amendments to this rule within 60 days. The changes will not change the meaning or impact of the rule and are more in the nature of updating the rule.

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

WORKFORCE SERVICES
ADMINISTRATION
140 E BROADWAY
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

AUTHORIZED BY: Raylene G. Ireland, Executive Director

EFFECTIVE: 06/27/2002

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Workforce Services, Administration
R982-201
Government Records Access and
Management Act

FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

DAR FILE NO.: 25037
FILED: 06/27/2002, 13:53

NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 35A-1-104 allows the Department to adopt rules in furtherance of its responsibilities.

These rules are also necessary and made in accordance with Section 63-2-101, the Government Records Access and

Management Act (GRAMA) which sets forth under what circumstances the Department can and cannot or must release information upon request.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has received no comments since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary to provide the public with guidance on how to obtain records from the Department under GRAMA and should be continued.

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

WORKFORCE SERVICES
ADMINISTRATION
140 E BROADWAY
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

AUTHORIZED BY: Raylene G. Ireland, Executive Director

EFFECTIVE: 06/27/2002

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Workforce Services, Administration
R982-301
Councils

FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

DAR FILE NO.: 25038
FILED: 06/27/2002, 14:03

NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 35A-1-104 authorizes the Department to make rules necessary for meeting the Department's responsibilities which include actions concerning council members.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: One public comment was received when the rule was last amended in 2002. The comment opined that the rule went beyond statutory authority regarding removal of council members. Department legal counsel determined that the rule does not go beyond statutory authority.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary to provide definitions and a method for the removal of council members and should be continued.

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

WORKFORCE SERVICES
ADMINISTRATION
140 E BROADWAY
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

AUTHORIZED BY: Raylene G. Ireland, Executive Director

EFFECTIVE: 06/27/2002

Workforce Services, Administration

R982-601

Provider Code of Conduct

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25039
FILED: 06/27/2002, 14:08

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 35A-1-104 authorizes the Department to pass rules necessary for the performance of its statutory duties.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has received no comments since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to set forth the code of conduct required of all contractors and vendors used by the Department and should be continued.

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

WORKFORCE SERVICES
ADMINISTRATION
140 E BROADWAY
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

AUTHORIZED BY: Raylene G. Ireland, Executive Director

EFFECTIVE: 06/27/2002

Workforce Services, Workforce Information and Payment Services

R994-403

Claim for Benefits

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25044
FILED: 06/27/2002, 14:35

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 35A-4-403(1) provides the procedure by which an unemployment client files a claim for benefits. This rule is in accordance with that statutory provision and provide guidance to Department employees and clients and employers to know when and under what circumstances benefits can be paid. Section 35A-1-104 authorizes the Department to make rules necessary to carry out its responsibilities under the law.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has received no written responses since the last five year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary to provide information to the public about when and how unemployment benefits can be obtained and should be continued.

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

WORKFORCE SERVICES
WORKFORCE INFORMATION AND PAYMENT SERVICES
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

AUTHORIZED BY: Raylene G. Ireland, Executive Director

EFFECTIVE: 06/27/2002

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**Workforce Services, Workforce
Information and Payment Services
R994-405
Ineligibility for Benefits**

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

DAR FILE NO.: 25046
FILED: 06/27/2002, 14:47

**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: Sections 35A-4-502 and 35A-1-104 authorize the Department to make rules as necessary for the administration of the unemployment program. Section 35A-4-405 sets forth the statutory requirements of eligibility.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS

SUPPORTING OR OPPOSING THE RULE: There have been no written comments since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to explain when a claimant may be eligible for unemployment compensation benefits and to provide employers, employees, and Department employees with guidance in enforcing the statutory intent in a uniform manner and should be continued.

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

WORKFORCE SERVICES
WORKFORCE INFORMATION AND
PAYMENT SERVICES
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

AUTHORIZED BY: Raylene G. Ireland, Executive Director

EFFECTIVE: 06/27/2002

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

NOTICES OF EXPIRED RULES

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (*Utah Code* Section 63-46a-9 (1996)). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules (Division). However, if the agency fails to file either the review or the extension by the five-year anniversary date of the rule, the rule expires. Upon expiration of the rule, the Division is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule, and it must follow regular rulemaking procedures to replace the rule if necessary.

The rules listed below were *not* reviewed in accordance with Section 63-46a-9 (1996). These rules have expired and have been removed from the *Utah Administrative Code*. The expiration of administrative rules for failure to comply with the five-year review requirement is governed by *Utah Code* Subsection 63-46a-9(8) (1996).

Natural Resources

Wildlife Resources

No. 25047: R657-32. Wildlife License, Permit or Certificate of Registration Refund.

Enacted or Last Five-Year Review: 06/06/97 (No. 19371, Filed 06/06/97 at 10:47 a.m., Published 07/01/97)

Expired: 06/06/2002

(DAR Note: This rule was in the repeal process, see DAR No. 24923 in the July 1, 2002, issue of the *Utah State Bulletin*, but expired before the repeal could become effective.)

Transportation

Operations, Maintenance

No. 25051: R918-2. Widening Pavement to Curb and Gutter.

Enacted or Last Five-Year Review: 06/26/97 (No. 19505, Filed 06/26/97 at 4:57 p.m., Published 07/15/97)

Expired: 06/26/2002

(DAR Note: Transportation, Operations, Maintenance will reenact this rule, see the proposed new rule filed under DAR No. 25053 in this *Bulletin*.)

End of the Notices of Expired Rules Section

Notices of Rule Effective Dates Begin on the Following Page

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

Alcoholic Beverage Control

Administration

No. 24771 (AMD): R81-1-2. Definitions.
Published: May 15, 2002
Effective: July 1, 2002

No. 24775 (AMD): R81-2. State Stores.
Published: May 15, 2002
Effective: July 1, 2002

No. 24780 (AMD): R81-3. Package Agencies.
Published: May 15, 2002
Effective: July 1, 2002

Commerce

Real Estate

No. 24731 (AMD): R162-9. Continuing Education.
Published: May 15, 2002
Effective: June 20, 2002

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 24802 (NEW): R414-100. Medicaid Primary Care Network Services.
Published: May 15, 2002
Effective: July 1, 2002

No. 24803 (NEW): R414-200. Non-Traditional Medicaid Health Plan Services.
Published: May 15, 2002
Effective: July 1, 2002

No. 24805 (AMD): R414-301. Medicaid General Provisions.
Published: May 15, 2002
Effective: July 1, 2002

No. 24806 (NEW): R414-310. Medicaid Primary Care Network Demonstration Waiver.
Published: May 15, 2002
Effective: July 1, 2002

Health Systems Improvement, Child Care Licensing

No. 24795 (AMD): R430-3-8. Sanction Action on License.
Published: May 15, 2002
Effective: June 20, 2002

Human Services

Recovery Services

No. 24794 (AMD): R527-210. Guidelines for Setting Child Support Awards..
Published: May 15, 2002
Effective: June 19, 2002

Labor Commission

Industrial Accidents

No. 24733 (AMD): R612-2-5. Regulation of Medical Practitioner Fees.
Published: May 15, 2002
Effective: June 18, 2002

Public Service Commission

Administration

No. 24727 (AMD): R746-210-2. Exemptions.
Published: May 1, 2002
Effective: June 20, 2002

No. 24655 (NEW): R746-400. Public Utility Reports.
Published: April 15, 2002
Effective: June 20, 2002

Transportation

Motor Carrier

No. 24736 (AMD): R909-75. Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes.
Published: May 15, 2002
Effective: June 25, 2002

Workforce Services

Employment Development

No. 24796 (AMD): R986-100. Employment Support Programs.
Published: May 15, 2002
Effective: July 1, 2002

No. 24797 (AMD): R986-200. Family Employment Program.
Published: May 15, 2002
Effective: July 1, 2002

NOTICES OF RULE EFFECTIVE DATES

No. 24798 (AMD): R986-400. General Assistance and Working Toward Employment.
Published: May 15, 2002
Effective: July 1, 2002

No. 24799 (AMD): R986-600. Workforce Investment Act.
Published: May 15, 2002
Effective: July 1, 2002

No. 24801 (AMD): R986-700. Child Care Assistance.
Published: May 15, 2002
Effective: July 1, 2002

No. 24800 (AMD): R986-900. Food Stamps.
Published: May 15, 2002
Effective: July 1, 2002

End of the Notices of Rule Effective Dates Section

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2002, including notices of effective date received through July 1, 2002, the effective dates of which are no later than July 15, 2002. 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).

DAR NOTE: Because of publication constraints, neither Index will appear in this issue of the Bulletin.

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).
