

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed August 16, 2002, 12:00 a.m. through September 3, 2002, 11:59 p.m.

Number 2002-18
September 15, 2002

Kenneth A. Hansen, Director
Nancy L. Lancaster, Editor

The *Utah State Bulletin (Bulletin)* is the official noticing publication of the executive branch of Utah State Government. The Department of Administrative Services, Division of Administrative Rules produces the *Bulletin* under authority of Section 63-46a-10, *Utah Code Annotated* 1953.

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

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)*. The *Digest* is available by E-mail or over the Internet. Visit <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

The *Bulletin* is printed and distributed semi-monthly by Legislative Printing. The annual subscription rate (24 issues) is \$174. Inquiries concerning subscription, billing, or changes of address should be addressed to:

LEGISLATIVE PRINTING
PO BOX 140107
SALT LAKE CITY, UT 84114-0107
(801) 538-1103
FAX (801) 538-1728

ISSN 0882-4738

Division of Administrative Rules, Salt Lake City 84114

All materials in this publication are in the public domain and may be reproduced, Reprinted, and/or redistributed as desired. Citation to the source is requested.

Printed in the United States of America

Library of Congress Cataloging-in-Publication Data

Utah state bulletin.

Semimonthly.

1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.
- I. Utah. Office of Administrative Rules.

KFU440.A73S7

348.792'025--DDC

85-643197

TABLE OF CONTENTS

1. EDITOR'S NOTES

Notice of Publication and Codification Error for Section R986-700-714 (DAR Nos. 24248, 24311, and 24801)..... 1

2. SPECIAL NOTICES

Governor, Administration: Governor's Executive Order: Declaring a State of Emergency in Sanpete County Due to Severe Thunderstorms, Hail, High Winds, and a F2 Tornado 2

Governor, Administration: Governor's Proclamation: Calling the Fifty-Fourth Legislature into a Tenth Extraordinary Session (Senate Only)..... 2

Governor, Administration: Governor's Executive Order: Declaring a State of Emergency Because of Fire Danger 3

Health, Health Care Financing: Public Notice - Medicaid Payments to Hospitals for Graduate Medical Education (GME) 4

3. NOTICES OF PROPOSED RULES

Administrative Services

Fleet Operations

No. 25195 (Amendment): R27-3-11. Daily Motor Pool Van, Four Wheel Drive Sport Utility Vehicle (4x4 SUV), and Wheel chair Accessible Vehicle Lease Criteria..... 6

Alcoholic Beverage Control

Administration

No. 25198 (Amendment): R81-7-3. Guidelines for Issuing Permits for Outdoor Public Events 7

Commerce

Consumer Protection

No. 25200 (Amendment): R152-11-5. Repairs and Service 8

Occupational and Professional Licensing

No. 25202 (Amendment): R156-1. General Rules of the Division of Occupational and Professional Licensing 10

Real Estate

No. 25216 (Amendment): R162-4-2. Trust Accounts..... 16

No. 25196 (Repeal): R162-201. Residential Mortgage Definitions 18

Securities

No. 25227 (Amendment): R164-4. Licensing Requirements 19

Community and Economic Development

Community Development, Fine Arts

No. 25190 (Amendment): R207-1. Utah Arts Council General Program Rules 28

No. 25191 (Amendment): R207-2. Policy for Commissions, Purchases, and Donations to, and Loans from, the Utah State Art Collections..... 28

Education

Administration

No. 25220 (Amendment): R277-106. Professional Practices Advisory Commission Appointment Process 30

TABLE OF CONTENTS

No. 25226 (Amendment): R277-444. Distribution of Funds to Arts and Sciences Organizations 31

No. 25219 (Amendment): R277-469. Instructional Materials Commission Operating Procedures 33

No. 25218 (Amendment): R277-475. Patriotic Education..... 36

No. 25225 (New Rule): R277-481. Charter School Accountability and Assistance 37

No. 25221 (Amendment): R277-705. Secondary School Completion and Diplomas..... 39

Environmental Quality

Water Quality

 No. 25203 (Amendment): R317-4-3. Onsite Wastewater Systems General Requirements 43

Governor

Planning and Budget, Chief Information Officer

 No. 25187 (Repeal and Reenact): R365-3. Computer Software Licensing, Copyright, Control, Retention, and Transfer 46

 No. 25186 (Repeal): R365-4. Information Technology Protection 50

Health

Health Care Financing, Coverage and Reimbursement Policy

 No. 25194 (New Rule): R414-7D. Financially Distressed Nursing Facility Pool 52

Professional Practices Advisory Commission

Administration

 No. 25223 (Amendment): R686-100. Professional Practices Advisory Commission, Rules of Procedure: Complaints and Hearings 54

 No. 25224 (Amendment): R686-103. Professional Practices and Conduct for Utah Educators 63

 No. 25222 (New Rule): R686-104. Utah Professional Practices Advisory Commission Denial of License Due to Background Check Offenses..... 66

Public Service Commission

Administration

 No. 25210 (Amendment): R746-400-5. Copies of Reports to Federal Government Agencies 67

Tax Commission

Auditing

 No. 25201 (Amendment): R865-6F-18. Corporations Exempt From the Franchise Tax Pursuant to Utah Code Ann. Section 59-7-105 68

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

Commerce

Securities

 No. 25199: R164-13. Definitions 71

 No. 25215: R164-15. Federal Covered Securities..... 71

Community and Economic Development

Community Development, Fine Arts

 No. 25188: R207-1. Utah Arts Council General Program Rules 72

| | |
|--|-----------|
| No. 25189: R207-2. Policy for Commissions, Purchases, and Donations to, and Loans from, the Utah State Art Collections | 72 |
| <u>Governor</u> | |
| Administration | |
| No. 25217: R355-1. Records Access and Management..... | 73 |
| Planning and Budget, Chief Information Officer | |
| No. 25173: R365-3. Computer Software Licensing, Copyright, Control, Retention, and Transfer | 73 |
| <u>Health</u> | |
| Administration | |
| No. 25204: R380-1. Petitions for Department Declaratory Orders..... | 74 |
| No. 25205: R380-5. Petitions for Declaratory Orders on Orders Issued by Committees | 74 |
| No. 25206: R380-10. Informal Adjudicative Proceedings | 75 |
| No. 25207: R380-100. Americans with Disabilities Act Grievance Procedures | 75 |
| Epidemiology and Laboratory Services, Epidemiology | |
| No. 25183: R386-702. Communicable Disease Rule | 76 |
| Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health | |
| No. 25184: R388-801. AIDS Testing and Reporting for Emergency Medical Services Providers Rule | 76 |
| No. 25185: R388-802. HIV Positive Student or School Employee Rule | 77 |
| No. 25181: R388-803. HIV Test Reporting | 78 |
| No. 25182: R388-804. Special Measures for the Control of Tuberculosis | 78 |
| <u>School and Institutional Trust Lands</u> | |
| Administration | |
| No. 25169: R850-100. Trust Land Management Planning..... | 79 |
| <u>Tax Commission</u> | |
| Auditing | |
| No. 25197: R865-25X. Brine Shrimp Royalty | 80 |
| 5. NOTICES OF FIVE-YEAR REVIEW EXTENSIONS | 81 |
| 6. NOTICES OF EXPIRED RULES..... | 82 |
| 7. NOTICES OF RULE EFFECTIVE DATES | 83 |
| 8. RULES INDEX..... | 84 |

EDITOR'S NOTES

NOTICE OF PUBLICATION AND CODIFICATION ERROR FOR SECTION R986-700-714 (DAR NOS. 24248, 24311, AND 24801)

In the December 1, 2001, issue of the Utah State Bulletin on page 117, an amendment to Section R986-700-714 was published under DAR No. 24248. This amendment added Subsections R986-700-714(3) and R986-700-714(4), and was made effective on February 1, 2002. Another amendment affecting Section R986-700-714 was published in the January 1, 2002, issue of the Bulletin on page 17 under DAR No. 24311. This amendment did not contain the new subsections added in the previous amendment, but a processing error prevented staff from identifying the omission before publication in the Bulletin. In addition, when the amendment in DAR No. 24311 was made effective on April 1, 2002, it was codified without the subsections added by DAR No. 24248.

In the May 15, 2002, issue of the Bulletin on page 59, another amendment to Section R986-700-714 was published under DAR No. 24801. This amendment included the language that had been added by DAR No. 24248. The amendment in DAR No. 24801 was made effective on July 1, 2002, and codified with the complete language.

If you have any questions regarding this correction, please contact Mike Broschinsky, Code Editor, Division of Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007, phone: (801) 538-3003, FAX: (801) 538-1773, or Internet E-mail: mbroschi@utah.gov.

End of the Editor's Notes Section

SPECIAL NOTICES

GOVERNOR'S EXECUTIVE ORDER: DECLARING A STATE OF EMERGENCY IN SANPETE COUNTY DUE TO SEVERE THUNDERSTORMS, HAIL, HIGH WINDS, AND A F2 TORNADO

WHEREAS, beginning on September 8, 2002, severe thunderstorms, hail, high winds and an F2 Tornado occurred in Manti, Sanpete County, Utah;

WHEREAS, several private residences and businesses were damaged, many severely;

WHEREAS, debris and damage to public infrastructure is extensive, and electrical power service has been disrupted to areas of the city and will remain so for several days;

WHEREAS, the county's search-and-rescue personnel, city and county public works and first-responder employees have been deployed around-the-clock and are severely strained;

WHEREAS, these conditions are creating a continuing threat to public safety, health and welfare of the citizens of Manti City and Sanpete County;

WHEREAS, the situation is expected to worsen as additional reports of damage are verified;

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

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

DO HEREBY ORDER THAT: It is found, determined and declared that a "State of Emergency" exists due to the aforesaid conditions in Sanpete County constituting a disaster that requires aid, assistance and relief available pursuant to state statutes and the Disaster Response 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 9th day of September, 2002.

(State Seal)

Michael O. Leavitt
Governor

Attest:

Olene S. Walker
Lieutenant Governor

GOVERNOR'S PROCLAMATION: CALLING THE FIFTY-FOURTH LEGISLATURE INTO A TENTH EXTRAORDINARY SESSION (SENATE ONLY)

WHEREAS, since the close of the 2002 General Session of the 54th Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

WHEREAS, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Legislature in Extraordinary Session;

NOW, THEREFORE, I, MICHAEL O. LEAVITT, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the Laws of the State of Utah, do by this Proclamation call the Senate only of the 54th Legislature of the State of Utah into a Tenth Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 18th day of September, 2002, at 12:00 noon, for the following purpose:

For the Senate to advise and consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2002 General Session of the 54th Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have here unto set my hand and cause to be affixed the Great Seal of the State of Utah. Done at the State Capitol in Salt Lake City, Utah, this 3rd day of September, 2002.

(STATE SEAL)

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 August 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 August, 2002.

(State Seal)

Michael O. Leavitt
Governor

Attest:

Olene S. Walker
Lieutenant Governor

**HEALTH
HEALTH CARE FINANCING**

PUBLIC NOTICE - MEDICAID PAYMENTS TO HOSPITALS FOR GRADUATE MEDICAL EDUCATION (GME)

Effective July 1, 2002, the Utah State Medicaid Program changed the procedures used to provide Graduate Medical Education (GME) funding to teaching hospitals in Utah. GME payments are made for each inpatient day of care provided to Medicaid clients by teaching hospitals. The purpose of this is to assure Medicaid is paying its fair share of the cost of educating medical professionals in the State of Utah. The project funds both the direct costs of training and the indirect costs for inpatient and outpatient facilities. The GME funds are directed to approved teaching programs by the Utah Medical Education Council. Additional direct payments will be made to the State Teaching Hospital (University Medical Center) from a separate funding pool for GME based on Medicaid inpatient days of care, and subject to federal limitations on GME payments.

Questions regarding this change may be directed to: Blaine Goff, Division of Health Care Financing, at (801) 538-6440; or Vance Eggers, at (801) 538-9184.

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 August 16, 2002, 12:00 a.m., and September 3, 2002, 11:59 p.m. are included in this, the September 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 October 15, 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 January 13, 2003, 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.

**Administrative Services, Fleet
Operations
R27-3-11**

**Daily Motor Pool Van, Four Wheel Drive
Sport Utility Vehicle (4x4 SUV), and
Wheel chair Accessible Vehicle Lease
Criteria**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 25195
FILED: 08/22/2002, 10:17

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To make wording in this section match Risk Management wording in regards to number of occupants allowed to travel in a 15-passenger van. To remove the wording that requires state employees to get written permission to lease a 4x4 vehicle from the daily motor pool.

SUMMARY OF THE RULE OR CHANGE: Removing text stating that "under no circumstances shall the number of occupants exceed" and replacing it with "DFO advises each agency not to exceed." Removing text that requires written consent to utilize a state-owned 4x4 vehicle.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 63A-9-401(1)(c)(ii) and 63A-9-401(1)(c)(viii)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There will be no cost to or savings in the State budget due to this rule change. The wording in the change will only affect the number of passengers allowed in a 15-passenger van and requirements regarding 4x4 vehicle use.
- ❖ LOCAL GOVERNMENTS: The Division does not lease vehicles to local governments, therefore there would be no effect on their budget.
- ❖ OTHER PERSONS: The Division does not lease vehicles to persons other than State employees and institutions of higher education, therefore there would be no effect on their budget.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule change only affects the number of passengers allowed in a state-owned 15-passenger van and the requirements prior to use of a state owned 4x4 vehicle. There will not be any compliance cost associated with the change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is governing the use of state-owned 15-passenger vans, therefore there will be no fiscal impact on area businesses.

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

ADMINISTRATIVE SERVICES
FLEET OPERATIONS
Room 4120 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:

Alison Taylor at the above address, by phone at 801-538-3306, by FAX at 801-538-1773, or by Internet E-mail at alisontaylor@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 10/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2002

AUTHORIZED BY: Steve Saltzgiver, Director

R27. Administrative Services, Fleet Operations.

R27-3. Vehicle Use Standards.

R27-3-11. Daily Motor Pool Sedans, Cargo Vans, Multi-Passenger Vans and Alternative Fuel Vehicles, ~~Four Wheel Drive Sport Utility Vehicle (4x4 SUV), and Wheel Chair Accessible Vehicle Lease Criteria~~.

(1) The standard state vehicle is a compact sedan, and shall be the vehicle type most commonly used when conducting state business.

~~(2) Requests for vehicles other than a compact sedan may be honored in instances where the agency and/or driver is able to identify a specific need.~~

~~(a) Requests for a four wheel drive sport utility vehicle (4x4 SUV) may be granted in the event that State business is being conducted in areas where off road or underdeveloped road conditions exist. An employee who wishes to lease a 4x4 SUV must provide written approval from that employee's supervisor. The approval must document the location and off road activity that would require the use of this type of vehicle. Neither adverse weather conditions nor the fact that state business is being conducted at the Utah State Surplus Property location in Draper, Ut., for the purposes of this section, are considered a specific need.~~

~~(2)(b)~~ Requests for a seven passenger van may be granted in the event that the driver is going to be transporting more than three authorized passengers.

~~(3)(e)~~ Requests for a fifteen (15) passenger van may be granted in the event that the driver is going to be transporting more than six authorized passengers. ~~[Under no circumstances shall the number of occupants]~~ The Division advises each agency not to exceed the maximum number of occupants recommended by the Division of Risk Management.

~~(4)(3)~~ Cargo vans shall be used to transport cargo only. Passengers shall not be allowed in cargo vehicles.

~~(5)(4)~~ Non-traditional (alternative) fuel shall be the primary fuel used when driving a bi-fuel or dual-fuel state vehicle. Drivers shall, when practicable, make every effort to use an alternative fuel when driving a bi-fuel or dual-fuel state vehicle.

KEY: state vehicle use
~~May 15, 2002~~
 53-13-102
 63A-9-401(1)(c)(viii)

▼ ————— ▼

Alcoholic Beverage Control, Administration **R81-7-3** Guidelines for Issuing Permits for Outdoor Public Events

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 25198
 FILED: 08/27/2002, 11:21

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to add a new section that gives the Alcoholic Beverage Control (ABC) Commission discretion when considering approval of a single event permit to require the applicant to ensure that sufficient controls will be in place to minimize the possibility of minors being sold or furnished alcohol or adults being over-served alcohol at outdoor public events.

SUMMARY OF THE RULE OR CHANGE: The new section allows the ABC Commission to establish general guidelines for those applying for single event permits at outdoor public events. The guidelines are for control measures that ensure that minors are not sold or furnished alcoholic beverages and that adults are not over-served at these events. The new section also gives the Commission discretion in either relaxing the control measures or requiring additional control measures after considering the facts and circumstances of a particular event application.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63-46A-3, 32A-1-107, 32A-7-101, and 32A-7-104

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** None--The rule only provides additional guidelines for those applying for a single event permit. It involves no additional cost to the state budget.
- ❖ **LOCAL GOVERNMENTS:** None--This rule involves the State ABC Commission and their ability to access applications for single event permits. It does not affect local governments.
- ❖ **OTHER PERSONS:** There may be costs related to staff training and the placement of other control measures that a single event permit applicant may not have otherwise planned on.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule will require that some staff involved in an outdoor public event holding a single event permit be alcohol-server trained. Alcohol-server training is provided by authorized instructors at

a cost (varies) to the student. The rule may also require the construction of alcohol consumption and identification verification areas and the purchase of unique cups or glasses to hold beverages containing alcohol.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact of this rule on businesses holding single event permits will be minimal when compared with its deterrent effect in safeguarding our youth from being served alcoholic beverages and adults from being over-served at outdoor public events.

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

ALCOHOLIC BEVERAGE CONTROL
 ADMINISTRATION
 1625 S 900 W
 SALT LAKE CITY UT 84104-1630, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@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 10/15/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2002

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.

R81-7. Single Event Permit.

R81-7-3. Guidelines for Issuing Permits for Outdoor Public Events.

(1) Purpose. Outdoor public events such as street festivals, fairs, concerts, and rodeos are often attended by large numbers of people, many of whom may be under the age of 21. The sale of alcohol at such events poses special control issues for event organizers and law enforcement officials. In deciding whether to issue a single event permit for such an event, the commission must be satisfied that sufficient controls will be in place to minimize the possibility of minors being sold or furnished alcohol or adults being over-served alcohol at the event. This rule identifies control measures that must be in place before the commission will issue a single event permit for an outdoor public event. However, this rule gives the commission discretion not to require specific control measures under certain circumstances after considering the facts and circumstances of a particular event.

(2) Authority. This rule is enacted under the authority of Sections 63-46A-3, 32A-1-107 and 32A-7-101 and -104.

(3) Policy.

(a) Before a single event permit will be issued by the commission to allow the sale of alcoholic beverages at an outdoor public event, the following control measures must be present at the event:

(i) There must be at least one location at the event where those wanting to purchase alcoholic beverages must show proof of age and either have their hand stamped or be issued a non-transferable wristband.

(A) The proof of age location(s) shall be separate from the alcoholic beverage sales and dispensing location(s).

(B) Proof of age may be established by:

(I) a current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of another state;

(II) a current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, identification Card Act, or issued by another state that is substantially similar to this state's identification card;

(III) a current valid military identification that includes date of birth and has a picture affixed; or

(IV) a current valid passport.

(C) Any person assigned to check proof of age shall have completed the alcohol server-training seminar outlined in 62A-8-103.5.

(D) The use of hand stamps or issuance of wristbands does not relieve those selling and dispensing alcoholic beverages from asking for proof of age if they suspect a person attempting to purchase an alcoholic beverage is under the age of 21 years.

(ii) Alcoholic sales and dispensing location(s) shall be separate from food and non-alcoholic beverage concession locations. However, if the consumption of alcohol at the event is limited to a confined, restricted area such as a "beer garden", then alcoholic beverages, food and non-alcoholic beverages may be sold at the same sales locations within the confined, restricted area.

(iii) Alcoholic beverages shall be served in readily identifiable cups or containers distinct from those used for non-alcoholic beverages.

(iv) No more than two alcoholic beverages shall be sold to a customer at a time.

(v) At least one person who has completed the alcohol server training seminar outlined in 62A-8-103.5 shall be at each location where alcoholic beverages are sold and dispensed to supervise the sale and dispensing of alcoholic beverages.

(vi) Alcoholic beverages must be distinguishable in appearance from non-alcoholic beverages.

(vii) All dispensing and consumption of alcoholic beverages shall be in a designated, confined, and restricted area where minors are not allowed without being accompanied by a parent or guardian, and where alcohol consumption may be closely monitored.

(b) Notwithstanding Subsection (a), the commission, after reviewing the facts and circumstances of a particular outdoor public event, may in its discretion relax any of the control measures outlined in Subsections (a) above.

(c) After reviewing the facts and circumstances of the outdoor public event, the commission may in its discretion require additional control measures as a condition of issuing a single event permit. These can include but are not limited to the following:

(i) Placing limits on the variety of alcoholic beverages served at the event.

(ii) Requiring a certain minimum number of law enforcement and/or security personnel at the event.

(4) Procedure. The following procedure shall govern applications for single event permits for outdoor public events:

(a) In addition to providing a description of the times, dates, location, nature and purpose of the event, the applicant shall include in the single event permit application a summary of all control measures that will be taken at the event to reduce the possibility of minors being furnished alcohol and adults being over-served alcohol at the event.

(b) Department staff shall provide this information to the commissioners prior to the commission's consideration of the single event permit application.

(c) The commission shall review the application to determine if all statutory requirements are in place, that all mandatory controls are in place, to consider request to waive the requirements of Subsections (1) (a) (vi) and (vii), and to assess whether any additional control measures such as those contained in Subsection (1)(c) should be required prior to issuing the single event permit.

KEY: alcoholic beverages

~~January 15, 1997~~2002

Notice of Continuation December 18, 2001

32A-1-107

▼ ————— ▼

Commerce, Consumer Protection

R152-11-5

Repairs and Service

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 25200

FILED: 08/28/2002, 09:57

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule change is to allow suppliers of repairs and services to take advantage of electronic technology in consumer transactions.

SUMMARY OF THE RULE OR CHANGE: In addition to written evidence of the consumer's authorization for repairs or service, the supplier may also record and retain electronic transmissions as evidence of the consumer's authorization for such repairs or services.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 13-2-6 and 13-11-8

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget because the rule change will not require the state to do anything different.

❖ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government because the rule that is affected is not administered by any local government.

❖ **OTHER PERSONS:** Because the proposed change should help facilitate the transaction of business, there are anticipated

savings to the parties involved, although the savings will be difficult to measure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons because the rule changes do not include any additional requirements. In fact, the changes will recognize the current business practices of some of those affected.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The car repair industry has expressed to the division its concern with the current rule and the way that the car repair industry does business. Often times, for the convenience of the consumer and the car repair business, authorization for repairs is done over the telephone, facsimile machine, or other electronic communication. Written agreements are not always practical to obtain prior to the work being done. The proposed change to the rule allows the car repair shop to record and retain the electronic transmission as evidence of the consumer's authorization for the consumer transaction. A copy of that evidence is required to be given to the consumer upon or before the time of the performance. The car repair shop may still follow the practice of obtaining the authorization in writing and the rule will not affect any other law that may require the agreement to be in writing.

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

COMMERCE
CONSUMER PROTECTION
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:

Kevin Olsen at the above address, by phone at 801-530-6929, by FAX at 801-530-6001, or by Internet E-mail at kvolsen@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 10/15/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2002

AUTHORIZED BY: Francine Giani, Director

R152. Commerce, Consumer Protection.

R152-11. Utah Consumer Sales Practices Act.

R152-11-5. Repairs and Service.

A. It shall be a deceptive act or practice in connection with a consumer transaction involving repairs or services for a supplier to:

(1) Fail to obtain the consumer's express authorization for repairs, inspections or other services, [provide a written estimate of repair or inspection costs, in advance when anticipated charges exceed \$25, which estimate lists] The authorization shall be obtained only after the supplier has clearly explained to the consumer the anticipated repairs, inspection or other services to be performed, the

estimated charges for those repairs, inspections or other services [basis upon which the charges to the consumer will be made], and the reasonably expected completion date of such repairs, inspection or other services to be performed, including any charge for re-assembly of any parts disassembled in regards to the providing of such estimate, [with authorization for such repairs, inspection or other services to be performed, after such written estimate is given, to be dated and evidenced by the signature of the consumer] For repairs, inspections or other services that exceed a value of \$25, the consumer's express authorization shall be in a form that is evidenced by written agreement signed by the consumer or by any electronically transferred authorization from the consumer such as a facsimile transmission, e-mail, telephonic, or other electronic means that is stored, recorded, or retained by the supplier evidencing the consumer's express authorization, a transcript or copy of which shall be provided to the consumer on or before the time that the consumer receives the initial billing or invoice for supplier's performance. This rule is in addition to the requirements of any other statute or rule;

(2) Fail to obtain [written] the consumer's express authorization [from the consumer] for additional, unforeseen, but necessary, repairs when those repairs amount to ten percent (10%) or more (excluding tax) of the original estimate, [with authorization for such to be dated and evidenced by the signature of the consumer] The consumer's express authorization for such additional repairs shall be in a form that is evidenced by written agreement signed by the consumer or by any electronically transferred authorization from the consumer such as a facsimile transmission, e-mail, telephonic, or other electronic means that is stored, recorded, or retained by the supplier evidencing the consumer's express authorization, a transcript or copy of which shall be provided to the consumer on or before the time that the consumer receives the initial billing or invoice for supplier's performance. This rule is in addition to the requirements of any other statute or rule;

(3) Fail to re-assemble any parts disassembled for inspection unless the consumer is so advised, prior to acceptance for inspection by supplier that there will be a charge for re-assembly of the parts or that it is not possible to re-assemble such parts;

(4) Charge for repairs which have not been authorized by the consumer;

(5) In the case of an in-home service call where the consumer had initially contacted the supplier, to fail to disclose before the supplier's repairman goes to the consumer's residence that a service or diagnostic charge will be imposed, even though no repairs may be effected;

(6) Represent that repairs are necessary when such is not the fact;

(7) Represent that repairs must be performed away from the consumer's residence when such is not the fact;

(8) Represent that repairs have been made when such is not the fact;

(9) Represent that the goods being inspected or diagnosed are in a dangerous condition or that the consumer's continued use of them may be harmful to him when such is not the fact;

(10) Intentionally understate or misstate materially the estimated cost of repair services;

(11) Fail to provide the consumer with an itemized list of repairs performed and the reason for such repairs, including:

(a) A list of parts and a statement of whether they are new, used, rebuilt, or after market, and the cost thereof to the consumer; and

(b) The number of hours of labor charged, apportioned for each part, service or repair, and the name or other reasonable means of identification of the mechanic or repairman performing the service, provided, however, that the requirements of (b) shall be satisfied by the statement of a flat rate price if such repairs are customarily done and billed on a flat rate price basis and such has been previously disclosed to the consumer in writing.

(12) Fail to give reasonable written notice before repairs or services are provided, that replaced or repaired parts may be inspected or fail to allow the consumer to inspect replaced or repaired parts on request, unless:

(a) the parts are to be rebuilt or sold by the supplier and such intended reuse is made known to the consumer by written notice on the original estimate; or

(b) the parts are to be returned to the manufacturer or distributor under a written warranty agreement; or

(c) the parts are impractical to return to the consumer because of size, weight, or other similar factors; or

(d) the consumer waives the return of such parts in writing after repairs are completed and a total cost is presented.

(13) Fail to provide to the consumer a written, itemized receipt for any consumer commodities that are left with, or turned over to, the supplier for repairs or services. Such receipt shall include:

(a) The exact name and business address of the business entity (or person, if the entity is not a corporation or partnership) which will repair or service the consumer commodities.

(b) The name and signature of the person who actually takes the consumer commodities into custody.

(c) The name of any entity to whom such repairs or services are sublet including the address, phone number and a contact person at such entity.

(d) A description including make and model number or such other features as will reasonably identify the consumer commodities to be repaired or serviced.

KEY: advertising, bait and switch, consumer protection

~~October 26, 2001~~ **2002**

Notice of Continuation June 3, 2002

63-46a-3

13-2-5

13-11



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

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25202

FILED: 08/29/2002, 11:51

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2002 legislative session, H.B. 205 enacted the Construction Services Commission to oversee the licensure activities of the construction trades with the concurrence of the Division director. Also, as a result of H.B. 96, the regulation of professional geologists was mandated to the Division. (DAR NOTE: H.B. 96 is found at UT L 2002 Ch 218, and was effective on 05/06/2002; and H.B. 205 is found at UT L 2002 Ch 241, and was effective 07/01/2002.)

SUMMARY OF THE RULE OR CHANGE: In Section R156-1-109: changes reflect the addition of the Construction Services Commission; clarifies the role of the Residence Lien Recovery Fund Advisory Board, director, administrative law judge, bureau managers, and various construction trades boards in adjudicative proceedings; and deletes the reference to the job title "enforcement counsel" and replaces it with the current title "regulatory and compliance officer". In Section R156-1-308a: adds a renewal date of December 31 in even years for professional geologists. Section R156-1-308d is added regarding the automatic expiration of licenses due to the dissolution of a corporate registration. Since Section R156-1-308d was added, the remaining sections that follow R156-1-308d have been relettered. In Section R156-1-502: Adds that using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing is considered unprofessional conduct.

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

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The Division will incur costs of approximately \$100 to reprint this rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ **LOCAL GOVERNMENTS:** There should be no costs or savings to local governments because they do not regulate the construction trades.

❖ **OTHER PERSONS:** Licensees who are now regulated under the Construction Services Commission may see a delay in resolving disciplinary action as a result of needing to be approved by both the specific occupational board and the commission. However, the Division is unable to determine any cost associated with this delay. As a result of the Division amending Rule R156-1, Experior, the Division's contract agency who distributes the Division's laws, rules, and applications, will have to obtain the newly amended rule and replace it in all licensure application packets and law/rule packets. Any costs associated with this will be borne by Experior. This Division is unable to determine the amount of costs that will be borne by Experior.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Licensees who are now regulated under the Construction Services Commission may see a delay in resolving disciplinary action as a result of needing to be approved by both the specific occupational board and the commission. These possible delays in resolving administrative issues may affect the ability to

practice. However, the Division is unable to determine any exact cost associated with this delay.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of these amendments is to: 1) update the Division rule in accordance with new laws passed during the 2002 legislative session involving the Construction Services Commission and the professional geologist licensing requirements; 2) further update the rule regarding presiding officers; and 3) establish procedures for reinstatement of licenses which automatically expire due to the dissolution of a corporate registration. These rule amendments are procedural in nature and do not create any negative fiscal impact to businesses beyond those already created by the Legislature's statutory amendments involving the Construction Services Commission. 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:
W. Ray Walker at the above address, by phone at 801-530-6256, by FAX at 801-530-6511, or by Internet E-mail at raywalker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2002

AUTHORIZED BY: J. Craig Jackson, Director

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

R156-1-109. Presiding Officers.

In accordance with Subsection 63-46b-2(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201 [~~and Section 58-1-109~~], except as otherwise specified in writing by the director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

(1) The division [~~enforcement counsel~~] regulatory and compliance officer is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the division [~~enforcement counsel~~] regulatory and compliance officer is unable to so serve for any reason, the assistant director is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with

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

(3) Except as provided in Subsection (4) or otherwise specified in writing by the director, the presiding officer for adjudicative proceedings [~~initiated by a request for agency action~~] before the division are as follows:

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

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

(ii) [~~the~~] informal adjudicative proceedings described in Subsections R156-46b-202(1)(g), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), and (t), and R156-46b-202(2)(a) through (d), however resolved, including memorandums of understanding and stipulated settlements.

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

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

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (f), (h), (i), (j), (k), (m), (p), and (r) [~~and (s)~~].

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

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

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(~~m~~) [~~o~~].

(e) Residence Lien Recovery Fund Advisory Board. The Residence Lien Recovery Fund Advisory Board shall be the presiding officer for adjudicative proceedings described in

Subsection R156-46b-201(1)(e) and R156-46b-202(1)(i) that exceed the authority of the program coordinator, as delegated by the board, or are otherwise referred by the program coordinator to the board for action.

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

(a) Commission.

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

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

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

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

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

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

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

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

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

(vi) If the director or his designee refuses to concur in an adopted order of the commission or its designee, the director or his designee shall return the order to the commission or its designee with the reasons set forth in writing for the nonconcurrence therein. The commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return, provided that unless the director or his designee and the commission or its designee agree to an extension, any final order must be issued within 90 days of the date

of the initial recommended order, or the adjudicative proceeding shall be dismissed. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the commission or its designee and the director or his designee to resolve the reasons for the director's refusal to concur in an adopted order.

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

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

(ix) The content of all orders shall comply with the requirements of Subsection 63-46b-5(1)(i) and Sections 63-46b-10 and 63-46b-11.

(b) Director. Unless otherwise specified in writing by the commission, the director is designated as the presiding officer for conducting informal adjudicative proceedings specified in R156-46b-202(2)(b).

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

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

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

(ii) informal adjudicative proceedings specified in Subsections R156-46b-202(1)(a) through (f), (h), (k), and (r).

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

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

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

(g) Alarm System Security and Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Alarm System Security and Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary

hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as alarm companies or agents.
~~[(4) Except as otherwise specified in writing by the director, the presiding officer for informal adjudicative proceedings initiated by a notice of agency action shall be the division director.]~~

R156-1-308a. Renewal Dates.

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

TABLE
RENEWAL DATES

| | | |
|---|--------------|------------|
| (1) Acupuncturist | May 31 | even years |
| (2) Advanced Practice Registered Nurse | January 31 | even years |
| (3) Animal Euthanasia Agency | May 31 | odd years |
| (4) Alternate Dispute Resolution Provdr | September 30 | even years |
| (5) Analytical Laboratory | May 31 | odd years |
| (6) Architect | May 31 | even years |
| (7) Athlete Agent | September 30 | even years |
| (8) Audiologist | May 31 | odd years |
| (9) Branch Pharmacy | May 31 | odd years |
| (10) Building Inspector | July 31 | odd years |
| (11) Burglar Alarm Security | July 31 | even years |
| (12) C.P.A. Firm | September 30 | even years |
| (13) Certified Shorthand Reporter | May 31 | even years |
| (14) Certified Dietitian | September 30 | even years |
| (15) Certified Nurse Midwife | January 31 | even years |
| (16) Certified Public Accountant | September 30 | even years |
| (17) Certified Registered Nurse Anesthetist | January 31 | even years |
| (18) Certified Social Worker | September 30 | even years |
| (19) Chiropractic Physician | May 31 | even years |
| (20) Clinical Social Worker | September 30 | even years |
| (21) Construction Trades Instructor | July 31 | odd years |
| (22) Contractor | July 31 | odd years |
| (23) Controlled Substance Precursor Distributor | May 31 | odd years |
| (24) Controlled Substance Precursor Purchaser | May 31 | odd years |
| (25) Cosmetologist/Barber | September 30 | odd years |
| (26) Cosmetology/Barber School | September 30 | odd years |
| (27) Deception Detection | July 31 | even years |
| (28) Dental Hygienist | May 31 | even years |
| (29) Dentist | May 31 | even years |
| (30) Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master | July 31 | even years |
| (31) Electrologist | September 30 | odd years |
| (32) Electrology School | September 30 | odd years |
| (33) Environmental Health Scientist | May 31 | odd years |
| (34) Esthetician | September 30 | odd years |
| (35) Esthetics School | September 30 | odd years |
| (36) Factory Built Housing Dealer | September 30 | even years |
| (37) Funeral Service Director | May 31 | even years |
| (38) Funeral Service Establishment | May 31 | even years |
| (39) Genetic Counselor | September 30 | even years |
| (40) Health Care Assistant | November 30 | even years |
| (41) Health Facility Administrator | May 31 | odd years |
| (42) Hearing Instrument Specialist | September 30 | even years |
| (43) Hospital Pharmacy | May 31 | odd years |
| (44) Institutional Pharmacy | May 31 | odd years |
| (45) Landscape Architect | May 31 | even years |
| (46) Licensed Practical Nurse | January 31 | even years |
| (47) Licensed Substance Abuse Counselor | May 31 | odd years |
| (48) Marriage and Family Therapist | September 30 | even years |

| | | |
|---|--------------|------------|
| (49) Massage Apprentice, Therapist | May 31 | odd years |
| (50) Master Esthetician | September 30 | odd years |
| (51) Nail Technologist | September 30 | odd years |
| (52) Nail Technology School | September 30 | odd years |
| (53) Naturopath/Naturopathic Physician | May 31 | even years |
| (54) Nuclear Pharmacy | May 31 | odd years |
| (55) Occupational Therapist | May 31 | odd years |
| (56) Occupational Therapy Assistant | May 31 | odd years |
| (57) Optometrist | September 30 | even years |
| (58) Osteopathic Physician and Surgeon | May 31 | even years |
| (59) Out of State Mail Order Pharmacy | May 31 | odd years |
| (60) Pharmaceutical Administration Facility | May 31 | odd years |
| (61) Pharmaceutical Dog Trainer | May 31 | odd years |
| (62) Pharmaceutical Manufacturer | May 31 | odd years |
| (63) Pharmaceutical Researcher | May 31 | odd years |
| (64) Pharmaceutical Teaching Organization | May 31 | odd years |
| (65) Pharmaceutical Wholesaler/Distributor | May 31 | odd years |
| (66) Pharmacist | May 31 | odd years |
| (67) Pharmacy Technician | May 31 | odd years |
| (68) Physical Therapist | May 31 | odd years |
| (69) Physician Assistant | May 31 | even years |
| (70) Physician and Surgeon | January 31 | even years |
| (71) Plumber Apprentice, Journeyman, Residential Apprentice, Residential Journeyman | July 31 | even years |
| (72) Podiatric Physician | September 30 | even years |
| (73) Pre Need Funeral Arrangement Provider | May 31 | even years |
| (74) Pre Need Funeral Arrangement Sales Agent | May 31 | even years |
| (75) Private Probation Provider | May 31 | odd years |
| (76) Professional Counselor | September 30 | even years |
| (77) Professional Engineer | December 31 | even years |
| (78) Professional Geologist | December 31 | even years |
| (7[8]9) Professional Land Surveyor | December 31 | even years |
| ([79]80) Professional Structural Engineer | December 31 | even years |
| (8[0]1) Psychologist | September 30 | even years |
| (8[1]2) Radiology Practical Technician | May 31 | odd years |
| (8[2]3) Radiology Technologist | May 31 | odd years |
| (8[3]4) Recreational Therapy Technician, Specialist, Master Specialist | May 31 | odd years |
| (8[4]5) Registered Nurse | January 31 | odd years |
| (8[5]6) Respiratory Care Practitioner | September 30 | even years |
| (8[6]7) Retail Pharmacy | May 31 | odd years |
| (8[7]8) Security Personnel | July 31 | even years |
| (8[8]9) Social Service Worker | September 30 | even years |
| ([89]90) Speech-Language Pathologist | May 31 | odd years |
| (9[0]1) Veterinarian | September 30 | even years |
| (9[1]2) Veterinary Pharmaceutical Outlet | May 31 | odd years |

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

(a) Certified Marriage and Family Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two

years past the date the minimum supervised experience requirement has been completed.

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

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

(d) Professional Employer Organization licenses expire every year on September 30.

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

R156-1-308d. Automatic Expiration of Licensure Upon Dissolution of License.

(1) A license that automatically expires prior to the expiration date shown on the license due to the dissolution of the licensee's registration with the Division of Corporations, with the registration thereafter being retroactively reinstated pursuant to Section 16-10a-1422, shall:

(a) upon written application for reinstatement of licensure submitted prior to the expiration date shown on the license, be retroactively reinstated to the date of expiration of licensure; and

(b) upon written application for reinstatement submitted after the expiration date shown on the current license, be reinstated on the effective date of the approval of the application for reinstatement, rather than relating back retroactively to the date of expiration of licensure.

R156-1-308[d]g. Denial of Renewal of Licensure - Classification of Proceedings - Conditional Renewal or Reinstatement During Pendency of Adjudicative Proceedings, Audit or Investigation.

(1) Denial of renewal of licensure shall be classified as a formal adjudicative proceeding under Rule R156-46b.

(2) When a renewal application is denied and the applicant concerned requests a hearing to challenge the division's action as permitted by Subsection 63-46b-3(3)(d)(ii), unless the requested hearing is convened and a final order is issued prior to the expiration date shown on the applicant's current license, the division shall conditionally renew the applicant's license during the pendency of the adjudicative proceeding as permitted by Subsection 58-1-106(8).

(3)(a) When a renewal applicant or a reinstatement applicant under Subsections 58-1-308(5) or (6)(b) is selected for audit or is under investigation, the division may conditionally renew or reinstate the applicant pending the completion of the audit or investigation.

(b) The undetermined completion of a referenced audit or investigation rather than the established expiration date shall be indicated as the expiration date of a conditionally renewed or reinstated license.

(c) A conditional renewal or reinstatement shall not constitute an adverse licensure action.

(d) Upon completion of the audit or investigation, the division shall notify the renewal or reinstatement applicant whether the applicant's license is unconditionally renewed, reinstated, denied, or partially denied or reinstated.

(e) A notice of unconditional denial or partial denial of licensure to a licensee who the division determines may be conditionally renewed or reinstated shall include the following:

(i) that the licensee's unconditional renewal or reinstatement of licensure is denied or partially denied and the basis for such action;

(ii) the division's file or other reference number of the audit or investigation;

(iii) that the denial or partial denial of unconditional renewal or reinstatement of licensure is subject to review and a description of how and when such review may be requested;

(iv) that the licensee's license automatically will or did expire on the expiration date shown on the license, and that the license will not be renewed or reinstated unless or until the applicant timely requests review; and

(v) that if the licensee timely requests review, the licensee's conditionally renewed or reinstated license does not expire until an order is issued unconditionally renewing, reinstating, denying, or partially denying the renewal or reinstatement of the licensee's license.

R156-1-308[e]f. Reinstatement of Licensure which was Active and in Good Standing at the Time of Expiration of Licensure - Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) submit documentation of prior licensure in the State of Utah;

(b) submit documentation that the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;

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

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

(e) pass a law and rules examination if such an examination has been adopted for the occupation or profession to which the application pertains; and

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

R156-1-308[f]g. Reinstatement of Restricted, Suspended, or Probationary Licensure During Term of Restriction, Suspension, or Probation - Requirements.

(1) Reinstatement of restricted, suspended, or probationary licensure during the term of limitation, suspension, or probation shall be in accordance with the disciplinary order which imposed the discipline.

(2) Unless otherwise specified in a disciplinary order imposing restriction, suspension, or probation of licensure, the disciplined licensee may, at reasonable intervals during the term of the disciplinary order, petition for reinstatement of licensure.

(3) Petitions for reinstatement of licensure during the term of a disciplinary order imposing restriction, suspension, or probation, shall be treated as a request to modify the terms of the disciplinary order, not as an application for licensure.

R156-1-308[g]h. Reinstatement of Restricted, Suspended, or Probationary Licensure After the Specified Term of Suspension of the License or After the Expiration of Licensure in a Restricted or Probationary Status - Requirements.

Unless otherwise provided by a disciplinary order, an applicant who applies for reinstatement of a license after the specified term of suspension of the license or after the expiration of the license in a restricted or probationary status shall:

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

(2) pay the established license renewal fee and the reinstatement fee; and

(3) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be reinstated to engage in the occupation or profession for which the applicant was suspended, restricted, or placed on probation.

R156-1-308[h]i. Relicensure Following Revocation of Licensure - Requirements.

An applicant for relicensure following revocation of licensure shall:

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

(2) pay the established license fee for a new applicant for licensure; and

(3) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was revoked.

R156-1-308[i]j. Relicensure Following Surrender of Licensure - Requirements.

The following requirements shall apply to relicensure applications following the surrender of licensure:

(1) An applicant who surrendered a license that was active and in good standing at the time it was surrendered shall meet the requirements for licensure listed in Section R156-1-308.

(2) An applicant who surrendered a license while the license was active but not in good standing as evidenced by the written agreement supporting the surrender of license shall:

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

(b) pay the established license fee for a new applicant for licensure; and

(c) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was surrendered.

R156-1-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

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

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

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

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

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

KEY: diversion programs, licensing, occupational licensing
~~February 19, 2002~~
Notice of Continuation May 2, 2002
58-1-106(1)



Commerce, Real Estate **R162-4-2** Trust Accounts

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25216

FILED: 09/03/2002, 12:19

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Currently principal brokers are required to maintain a non-interest-bearing trust account for deposit of client funds, even if they don't use it because, instead, they choose to deposit client funds to an interest-bearing trust account, from which the interest is contributed to affordable housing programs. This change would allow a broker to maintain only one trust account instead of two. In addition, the current rule does not provide sufficient standards for the type of affordable housing program that may be the recipient of the interest. This change sets forth the standards that are necessary to make sure that the interest is paid only to legitimate non-profit organizations.

SUMMARY OF THE RULE OR CHANGE: Brokers will be allowed to choose whether their primary "Real Estate Trust Account" will be a non-interest-bearing account or an interest-bearing account, the interest on which will benefit an affordable housing program in Utah. In addition, this change provides that the affordable housing program and the recipient of the grant from the affordable housing program must both be

qualified as non-profit organizations under Section 501(c)(3) of the Internal Revenue Code.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-2-5.5.

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--The State of Utah does not maintain real estate broker trust accounts or receive revenue from interest on real estate broker trust accounts.

❖ LOCAL GOVERNMENTS: None--Local government does not maintain real estate broker trust accounts or receive revenue from interest on real estate broker trust accounts.

❖ OTHER PERSONS: Real estate brokers who participate in an affordable housing program and elect to maintain only the interest-bearing account will realize a savings by not having to maintain a non-interest-bearing trust account that they do not use.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs are anticipated because the rule change will result in a savings for the real estate brokers who are subject to the trust account rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Real estate brokers may elect to maintain an interest-bearing account, thereby reducing income to financial institutions previously earned on non-interest-bearing accounts. This will be offset by the generation of interest income to be used for low income housing.

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 10/15/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2002

AUTHORIZED BY: Ted Boyer Jr., Executive Director

R162. Commerce, Real Estate.
R162-4. Office Procedures - Real Estate Principal Brokerage.
R162-4-2. Trust Accounts.

4.2 All monies received in a real estate transaction regulated under Section 61-2-1, et seq., must be deposited in a ~~separate non-~~

~~interest bearing~~] "Real Estate Trust Account," ~~[or, if the broker and the parties to the transaction agree in writing, into an "Interest Bearing Real Estate Trust Account,"]~~ in a Utah bank, credit union, or other approved escrow depository in this state. Such "Real Estate Trust Account" shall be non-interest-bearing except as provided in Section 4.2.4 below. The principal broker will be held personally responsible for deposits at all times. The principal broker must notify the Division in writing of the location and account numbers of all real estate trust accounts which he maintains. ~~[The]~~All "Real Estate Trust Accounts" ~~[and the "Interest Bearing Real Estate Trust Account"]~~ shall be used exclusively for real estate transactions regulated under Section 61-2-1, et seq. Funds received in connection with rental of tourist accommodations for any period of less than 30 consecutive days shall not be deposited in ~~[the]~~ a "Real Estate Trust Account" ~~[or the "Interest Bearing Real Estate Trust Account."]~~

4.2.1. Deposits. All monies received by a licensee in a real estate transaction, whether it be cash or check, must be delivered to the principal broker and deposited within three banking days after receipt of the funds by the licensee. This rule does not apply when:

4.2.1.1. The Real Estate Purchase Contract or other agreement states that the earnest money or other funds are to be held for a specific length of time or are to be deposited upon acceptance by the seller; or

4.2.1.2. The Real Estate Purchase Contract or other agreement states that the earnest money or other funds are to be made out and paid to the seller, or to the person or company named as the escrow closing agent; or

4.2.1.3. A promissory note is given as the earnest money deposit or otherwise credited to the transaction. The promissory note must name the seller as payee and be retained in the principal broker's file until closing. If a promissory note is used in a real estate transaction, the Real Estate Purchase Contract or other agreement must disclose that the consideration is in the form of a promissory note.

4.2.2. Commingling. Not more than \$500 of the principal broker's own funds can remain in the "Real Estate Trust Account" or the "Property Management Trust Account," or the Division will consider the account to be commingled.

4.2.3. Builder Deposits. If a principal broker, who is also a builder or developer, receives deposit money under a Real Estate Purchase Contract, construction contract, or other agreement which provides for the construction of a dwelling, the deposit money must be placed in the "Real Estate Trust Account" or if the broker and the parties to the transaction agree in writing, the "Interest Bearing Real Estate Trust Account" and not be used for construction purposes unless specifically provided in the document or by separate written consent of the purchaser.

4.2.4. Interest Bearing Trust Accounts. Real Estate Trust Accounts may be interest-bearing only as provided in Section 4.2.4.1 or 4.2.4.2 below:

4.2.4.1 If an earnest money deposit or other trust funds are received and the parties to the transaction believe that it would be uneconomical to place the money ~~[on demand in the "Real Estate Trust Account," or the parties want interest earned on the funds to be used for an affordable housing program, such as the Utah Association of REALTORS Housing Opportunity Fund (UARHOF),]~~ in a non-interest-bearing trust account, the principal broker ~~[may, upon the written request of the parties,]~~ shall place the money in a separate ~~[4]~~ interest ~~[B]~~ bearing "Real Estate Trust Account ~~[B]~~" upon written request of the parties. The written request

must designate to whom the interest will be paid upon completion or failure of the sale ~~[B]~~ or

4.2.4.2 Except as provided in Section 4.2.4.1, a principal broker may elect to maintain an interest-bearing "Real Estate Trust Account" only if the interest earned on the account is paid to a non-profit organization that has qualified, and remains qualified at the time of the payment, under Section 501(c)(3) of the Internal Revenue Code. Such non-profit organization must have as its exclusive purpose the providing of grants to affordable housing programs in the State of Utah. The affordable housing program that is the recipient of the grant must also be qualified, at the time of the grant, as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code. If a principal broker makes this election, the Division must be notified in writing of the location and account number of the interest-bearing "Real Estate Trust Account" at the time the account is opened.

4.2.5. Liability for Receipt. All consideration represented as received by a licensee on a Real Estate Purchase Contract or other document must have, in fact, been received by the licensee. A licensee must not rely on a buyer's or a lessee's promise to deliver the consideration at a future date.

4.2.6. Property Management Trust Account. Each principal broker engaged in property management shall establish a separate "Property Management Trust Account." A principal broker who collects rents for others only occasionally or who does so as a convenience for his clients, and manages no more than six accounts, may use the "Real Estate Trust Account" for this purpose and need not maintain a "Property Management Trust Account".

4.2.7. Disbursements. All cash and like payments in lieu of cash received by a principal broker in a real estate transaction are to be disbursed only in accordance with specific language in the Real Estate Purchase Contract authorizing such disbursement, other proper written authorization of the parties having an interest in the payments, or by court order.

4.2.7.1. The withdrawal of any portion of the principal broker's sales commission must not take place without written authorization from the seller and buyer or until the closing statements have been delivered to the buyer and seller and the buyer or seller has been paid for the amount due as determined by the closing statement.

4.2.7.2. Commissions due the principal broker, other licensees associated with the principal broker, or other principal brokers may be paid directly from the trust account only after the transaction is closed or otherwise terminated. If commissions are so disbursed, a record of each disbursement is to be recorded on the trust account ledger sheet for the transaction.

4.2.7.3. When it becomes apparent to the principal broker that a transaction has failed, or if a party to the failed transaction requests disbursement of the earnest money or other trust funds, the principal broker is required to determine whether any of the conditions in the Real Estate Purchase Contract authorizing disbursement have occurred or whether there is other written authorization of the parties to disburse the trust funds.

4.2.7.4. Disputes over funds. For the purposes of this section and section 4.2.7.5, a "dispute over funds" is defined as any situation in which both parties to a contract have submitted a written claim of entitlement to earnest money or other trust funds to the broker holding the funds.

4.2.7.4.1 If there is written authorization to disburse in the Real Estate Purchase Contract signed by both parties or in another writing signed by the party who will not be receiving the funds, the principal

broker may disburse the funds without further delay, whether or not there is a dispute between the parties over the funds.

4.2.7.4.2 The principal broker may, at the broker's option, interplead the funds into court in any transaction where the broker is unable to determine whether there is written authorization to disburse under the circumstances of the transaction. If the principal broker interpleads the funds, the funds shall only be disbursed by the principal broker: a) upon written authorization of the parties who will not receive the funds; b) pursuant to the order of a court of competent jurisdiction; or c) as provided in Section 4.2.7.6.

4.2.7.5 Mediation. In the event a dispute arises over the return or forfeiture of the earnest money or other trust funds and the principal broker has not already disbursed the funds in accordance with section 4.2.7.4.1, or interpleaded the funds in accordance with section 4.2.7.4.2, and if no party has filed a civil suit arising out of the transaction, the principal broker shall, within 15 days of receiving written notice of the fact that both parties claim the disputed funds, provide the parties written notice of the dispute and request them to meet to mediate the matter. If the parties have contractually agreed to submit disputes arising out of their contract to mediation, the principal broker shall notify the parties of their obligation to submit the dispute over funds to an independent mediator agreed upon by the parties. If the parties have not contractually agreed to independent mediation, the principal broker holding the earnest money or trust funds shall use good faith best efforts to mediate.

4.2.7.5.1. Unsuccessful mediation. In the event the dispute over funds is not resolved in either a broker or independent mediation attempt, the principal broker shall maintain the disputed funds in a non-interest bearing real estate trust account. If the parties authorize, or if they previously authorized, deposit into a separate interest bearing trust account as provided in R162-4.2.4, the disputed funds may be maintained in a separate interest bearing trust account for disputed funds. The funds shall only be disbursed by the principal broker: (1) upon written authorization of the parties who will not receive the funds; (2) pursuant to the order of a court of competent jurisdiction; or (3) as provided in Section 4.2.7.4.2.

4.2.7.6. If the principal broker has not received written notice of a claim to the funds, including interest if any, within five years after the failure of the transaction, the principal broker may remit the funds to the State Treasurer's Office as "abandoned" property according to the provisions of Utah Code Section 67-4a-101, et seq.

4.2.8. Records. A principal broker must maintain at his principal business location a complete record of all consideration received or escrowed for real estate transactions in the following manner:

4.2.8.1. A duplicate deposit slip must show the amount of money received, the transaction number, and the date and place of deposit.

4.2.8.2. A set of checks and deposit slips must be used denoting the principal broker's business name and address, stating "Real Estate Trust Account" or "Property Management Trust Account," with the checks numbered consecutively. Checks drawn on this account are to be identified to the specific transaction. Deposits to this account are to be identified to the specific transaction. Voided trust checks are to be marked "Void" and the original check retained in the principal broker's file. A principal broker may establish as many bank trust accounts as desired. However, each trust account must be identified with the type of activity for which the account is to be used and the Division must be notified in writing when each account is established.

4.2.8.3. A check register or check stubs must be maintained which itemize deposits and disbursements in consecutive order showing the date, payee or payor, the transaction information, check number, amount of disbursement or deposit, and the current balance remaining in the account.

4.2.8.4. An individual trust ledger sheet must be established upon deposit of any consideration and assigned a sequential transaction number for each transaction--be it rental, sale, or other. The ledger sheet must show the names of the parties, location of the property, the date and amount of each deposit or disbursement, the name of the payee and payor, the current balance remaining, and any other relevant transaction information. Each ledger sheet, after the transaction is closed, must show the final disposition of the consideration and be retained in the principal broker's file for a minimum of three years following the year in which the transaction was closed.

4.2.8.5. The trust account is to be reconciled with the bank statement at least monthly. The trust liability, which is the total of ledger cards, and similar books, records, and accounts must be kept up to date.

KEY: real estate business

[June 3,]2002

Notice of Continuation June 3, 2002

61-2-5.5



Commerce, Real Estate **R162-201** Residential Mortgage Definitions

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 25196

FILED: 08/22/2002, 17:07

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division has recently learned that any payment for referral of federally-related mortgage business, even de minimis payment, is prohibited by the federal Real Estate Settlement Practices Act (RESPA).

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety. (DAR NOTE: On August 20, 2002, the Division of Real Estate filed five nonsubstantive changes that split Rule R162-202 into five separate rules. One of the changes (DAR No. 25176) renumbers Section R162-202-1 to Rule R162-201, which is the object of this proposed repeal (DAR No. 25196). Nonsubstantive changes are not printed in the Bulletin. To obtain a copy of the nonsubstantive change, contact Nancy Lancaster at 801-538-3218.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2c-203(3)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None--The State does not engage in the residential mortgage business.

❖ LOCAL GOVERNMENTS: None--Local governments do not engage in the residential mortgage business.

❖ OTHER PERSONS: Minimal--RESPA already prohibits payment of referral fees for federally-related loans. Eliminating a de minimis payment for referral on those few loans that are not federally-related would have little impact on the mortgage industry in Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No mortgage lender will be required to incur expense if this rule is eliminated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact. The referral fees are already prohibited by Federal law.

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 10/15/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2002

AUTHORIZED BY: Ted Boyer Jr., Executive Director

R162. Commerce, Real Estate.

~~R162-201. Residential Mortgage Definitions.~~

~~R162-201-1. De Minimis.~~

~~—An unsolicited gift, compensation, or other things of value may be given by a person transacting the business of residential mortgage loans if it is given in appreciation for having used the services of the person giving the gift, compensation, or other thing of value and it does not exceed \$50.00.~~

~~KEY: residential mortgage loan origination~~

~~December 24, 2001~~

~~61-2e-301(1)(a)~~

~~61-2e-301(1)(i)~~

~~61-2e-302]~~



Commerce, Securities R164-4 Licensing Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25227

FILED: 09/03/2002, 18:35

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Provide for electronic filing of licensing applications for Investment Advisers, Investment Adviser Representatives, and Federal Covered Advisers through the Investment Adviser Registration Depository (IARD) and/or Central Registration Depository (CRD). Both the IARD and CRD are operated by the National Association of Securities Dealers.

SUMMARY OF THE RULE OR CHANGE: Amends Section R164-4-2 to define "CRD" and "IARD", provides that licensing applications for investment advisers be submitted to the Investment Adviser Registration Depository, and that licensing applications for investment adviser representatives be submitted to the Central Registration Depository, and makes technical corrections. Amends Section R164-4-3 to define "IARD," designate IARD to receive electronic filings for the Division, require licensing applications for investment advisers and investment adviser representatives be submitted electronically through the CRD and/or IARD, provides hardship exemptions from electronic filing, and makes technical corrections. Amends Section R164-4-6 to require Federal Covered Advisers to submit their notice filings to the Division electronically through the IARD. The amendments were derived from model language being put in place by the federal government and all state securities agencies to accommodate a national electronic filing system for investment adviser and related filings.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Minimal savings--While the applications will be submitted electronically, the savings to the state will be minimal. The Division will still receive other licensing applications manually so the Division will not be able to eliminate the database that is used for licenses. There may be some efficiencies gained by reviewing the applications on-line, but the most work intensive part of the filing will still be submitted in paper format (ADV Part 2). As a result, there is no anticipated decrease in staffing or data processing resources. There will be a slight decrease in the amount of information sent to Archives each year by about 5 boxes per year.

❖ LOCAL GOVERNMENTS: None--This rule does not affect local government.

❖ OTHER PERSONS: 2002: \$16,065 cost to license applicants. 2003: \$12,465 cost to license applicants. The IARD and CRD are nationally licensing systems where the licensee submits his or her filing once to the system and the system distributes electronically to all of the states where the licensee seeks licensure. The costs to file with the system are as follows: Firms - \$150 setup, \$100 annual; Individuals - \$45 setup, \$45 annual. This fee is in addition to the licensing fees charged in each state. However, the IARD fees permit the licensee to file

in all 50 states and with the federal government. The federal government and most states already mandate licensing through this system and most of the Division's licensees are already licensed in other states, so for these firms there will be no additional cost to use the system to file in Utah. The aggregate cost was based on the following: The Division has 121 Investment Advisers licensed. Approximately 49 of these are already filing on IARD because they operate in other states. Approximately 72 firms will be required to file through IARD due to this rule for an aggregate cost of \$10,800 during 2002. Thereafter, the cost to renew annually will be \$7,200. The Division has 1,728 Investment Adviser Representatives licensed of which approx 1,611 operate in other states. Approximately 117 Investment Adviser Representatives will be required to file through the CRD because of this rule for an aggregate cost of \$5,265 during 2002 and the same amount to renew annually after 2002. All federal covered advisers are already required to file through the IARD so this rule imposes no additional costs. Filing may be accomplished by use on any Internet terminal. Individuals and Firms that do not have access to the Internet have been told that they may use the computers of the Division to file.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Investment Advisers: \$150 setup fee on IARD, \$100 annual fee on IARD; Investment Adviser Representatives: \$45 setup fee on CRD, \$45 annual fee on CRD; Federal Covered Advisers: \$150 setup fee on IARD, \$100 annual fee on IARD.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change is in accordance with the national trend towards a national electronic filing system for investment advisers. As stated in the rule summary, there are costs associated with this rule amendment for securities investment advisers and adviser representatives who are licensed only in the State of Utah. Therefore, the Utah securities industry will be negatively impacted by the additional cost of filing license applications through the national system. However, the rule amendment will also have a general positive fiscal impact to businesses in the long run. For example, the national electronic filing system will allow the public to access information about licensees on the web, and public disclosures required by licensees may also be obtained on-line; an applicant need only submit one application for licensure, but may be permitted to practice in various jurisdictions; and the state's ability to share information through the national filing system will improve the state's ability to investigate, apprehend and prosecute a licensee when necessary. Unfortunately, these positive aspects are difficult to quantify. /s/ Ted Boyer, Executive Director, Department of Commerce 8/29/2002

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

COMMERCE
SECURITIES
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:

Tony Taggart at the above address, by phone at 801-530-6606, by FAX at 801-530-6980, or by Internet E-mail at ttaggart@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 10/15/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2002

AUTHORIZED BY: Tony Taggart, Director

R164. Commerce, Securities.

R164-4. Licensing Requirements.

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

- (A) Authority and purpose
- (1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.
 - (2) This rule sets forth the procedure and requirements to license as a broker-dealer, broker-dealer agent, or issuer-agent.
- (B) Definitions
- (1) "Division" means the Division of Securities, Utah Department of Commerce.
 - (2) "CRD" means the Central Registration Depository.
 - (3) "NASD" means the National Association of Securities Dealers.
 - (4) "NASAA" means the North American Securities Administrators Association, Inc.
 - (5) "SEC" means the United States Securities and Exchange Commission.
- (C) Broker-dealer licensing, post licensing, renewal, and withdrawal requirements
- (1) License requirements
 - (1)(a) To license as a broker-dealer, applicant must be a member of the NASD and submit to the CRD the following:
 - (1)(a)(i) SEC Form BD - Uniform Application for Broker-Dealer Registration;
 - (1)(a)(ii) application for a license as an agent in Utah, as specified in paragraph (D), for each principal, officer, agent or employee who directly supervises, or will directly supervise, any licensed agent associated with applicant in Utah; and
 - (1)(a)(iii) a license fee as specified in the Division's fee schedule, and in the form of payment prescribed by the CRD.
 - (1)(b) A certificate of license will not be issued. Proof of status is available from the CRD.
 - (2) Post-licensing requirements
 - (2)(a) Applicant must file amendments to SEC Form BD with the CRD only.
 - (2)(b) Applicant must file SEC Form X-17A-5, FOCUS reports in a timely manner with the NASD. However, the Division may request applicant to provide a copy of the FOCUS Report.
 - (3) License renewal requirements
 - (3)(a) All licenses expire on December 31 of each year.
 - (3)(b) To renew license, applicant must submit to the CRD the license fee specified in the Division's fee schedule before December 31.

- (4) License or application withdrawal requirements
- (4)(a) To withdraw a license or application, applicant must file with the CRD, or with the Division if not required by the CRD, SEC Form BDW - Uniform Request for Withdrawal from Registration as a Broker-Dealer.
- (4)(b) A withdrawal is effective 30 days following receipt of SEC Form BDW, unless the Division notifies applicant otherwise.
- (D) Broker-dealer agent licensing, renewal, and withdrawal requirements
- (1) License requirements
- (1)(a) To license as a broker-dealer agent, applicant or the sponsoring broker-dealer must submit to the CRD the following, in addition to any information required by the NASD, the CRD, or the SEC:
- (1)(a)(i) NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer;
- (1)(a)(ii) proof that applicant passed the Series 63, Uniform Securities Agent State Law Examination (Series 63 Exam), or the Series 66, Uniform Combined State Law Examination (Series 66 Exam), which are administered by the NASD, and any other exams required by the SEC or the NASD; and
- (1)(a)(iii) a license fee as specified in the Division's fee schedule, and in the form of payment prescribed by the CRD.
- (1)(b) A certificate of license will not be issued. Proof of status is available from the CRD.
- (2) License renewal requirements
- (2)(a) All licenses expire on December 31 of each year.
- (2)(b) To renew license, applicant must submit to the CRD the license fee specified in the Divisions fee schedule before December 31.
- (3) License or application withdrawal requirements
- (3)(a) To withdraw a license or application, applicant must file with the CRD, NASD Form U-5 - Uniform Termination Notice for Securities Industry Registration.
- (3)(b) A withdrawal is effective 30 days following receipt of NASD Form U-5, unless the Division notifies applicant otherwise.
- (4) Miscellaneous provisions
- (4)(a) Except as provided in subparagraph (D)(4)(b), applicant may associate with only one broker-dealer at a time.
- (4)(b) A dual license may be allowed by the director if:
- (4)(b)(i) applicant requests a dual license in writing to the Division which identifies the broker-dealers with which applicant will associate and sets forth the reasons for the dual license;
- (4)(b)(ii) both broker-dealers with which applicant intends to associate represent in writing to the Division that each assumes full responsibility for applicant at all times; and
- (4)(b)(iii) applicant discloses the dual license to each client.
- (E) Issuer-agent licensing, renewal, and withdrawal requirements
- (1) License requirements
- (1)(a) To license as an issuer-agent, applicant or the sponsoring issuer must submit to the Division the following:
- (1)(a)(i) NASD Form U-4 with original signatures;
- (1)(a)(ii) proof that applicant passed the Series 63 Exam or the Series 66 Exam;
- (1)(a)(iii) a license fee as prescribed in the Division's fee schedule; and
- (1)(a)(iv) a surety bond if required by Section R164-11-1.
- (2) License renewal requirements
- (2)(a) All licenses expire on December 31 of each year.

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

- (2)(b)(i) NASD Form U-4 with original signatures; and
- (2)(b)(ii) The license fee specified in the Division's fee schedule.

(3) License or application withdrawal requirements

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

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

(4) Miscellaneous provisions

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

R164-4.2. Investment Adviser and Investment Adviser Representative Licensing Requirements.

(A) Authority and Purpose

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

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

(B) Definitions

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

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

~~(2)~~(3) "Division" means the Division of Securities, Utah Department of Commerce.

~~(3)~~(4) "Fee" means any remuneration received, directly or indirectly, for investment advice given or investment advisory services rendered, including, among other things, charges for a publication which includes investment advice and commissions paid or received when securities are purchased or sold as a result of investment advice given or investment advisory services rendered. License fees referred to in this rule are not included.

~~(4)~~(5) "IARD" means the Investment Adviser Registration Depository.

~~(5)~~(6) "Investment advice" or "investment advisory services" means advice given or services rendered concerning the value of securities or as to the advisability of investing in, or purchasing or selling securities.

~~(6)~~(7) "NASAA" means the North American Securities Administrators Association, Inc.

~~(7)~~(8) "NASD" means the National Association of Securities Dealers.

~~(8)~~(9) "SEC" means the United States Securities and Exchange Commission.

~~(9)~~(10) "SIPC" means the Securities Investor Protection Corporation.

(C) Investment adviser and investment adviser representative licensing requirements

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

(1)(a) To the IARD:

~~(1)(a)(i)~~ SEC Form ADV - Uniform Application for Investment Adviser Registration, including applicant's audited

balance sheet if required under item 14 of part II of Form ADV[~~with original signatures~~]; and

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

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

~~(1)(b) To the CRD:~~

~~(1)(e)(b)(i) NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer for applicant's designated official; and~~

~~(1)(d)(b)(ii) proof that applicant's designated official has passed the Series 65 or both the Series 66 Exam and Series 7 Exam; and~~

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

~~(1)(c) To the Division:~~

~~(1)(c)(i) Part II of SEC Form ADV - Uniform Application for Investment Adviser Registration; and~~

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

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

~~(2)(a) To the CRD:~~

~~(2)(a)(i) NASD Form U-4; and~~

~~[(2)(b)(2)(a)(ii) proof applicant passed the Series 65 Exam or both the Series 66 Exam and Series 7 Exam; and]~~

~~[(2)(e)(2)(b) To the IARD, a license fee as specified in the Division's fee schedule.~~

(3) Miscellaneous provisions

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

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

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

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

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

(D) Investment adviser and associated investment adviser representative renewal requirements

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

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

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

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

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

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

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

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

(E) Investment adviser representatives of federal covered advisers

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

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

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

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

(F) Investment adviser and investment adviser representative withdrawal requirements

(1) Investment adviser withdrawal requirements

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

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

(2) Investment adviser representative withdrawal requirements

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

(2)(b) A withdrawal is effective thirty days following receipt of applicant's ~~written request for withdrawal~~ NASD Form U-5, unless the Division notifies applicant otherwise.

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

(1) Lawyers, accountants, engineers or teachers

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

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

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

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

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

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

(1)(c)(i) If the primary professional advice for which the professional receives a fee involves business or tax planning and the

professional neither advertises or otherwise holds himself out as a provider of investment advice, nor holds funds which the professional invests for clients. The professional may also provide investment advice to clients in connection with the planning or other professional services, without being required to become licensed as an investment adviser.

(1)(c)(ii) If the professional advertises or otherwise holds himself out as a provider of investment advice, the professional must be licensed as an investment adviser whether or not the professional actually provides investment advice.

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

(2) Broker-dealers and broker-dealer agents

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

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

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

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

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

(3) Insurance agents

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

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

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

(4) Others

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

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

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

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

R164-4-3. General Licensing Requirements.

(A) Authority and Purpose

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

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

(B) Definitions

(1) "CRD" means the Central Registration Depository operated by the NASD.

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

(3) "IARD" means the Investment Adviser Registration Depository operated by the NASD.

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

~~[(4)]~~(5) "NASD" means the National Association of Securities Dealers.

~~[(5)]~~(6) "SEC" means the United States Securities and Exchange Commission.

~~[(6)]~~(7) "Termination" means the date on which the NASD processes NASD Form U-5 - Uniform Termination Notice for Securities Industry Registration.

(C) Examination requirements

(1) A broker-dealer agent must pass the Series 63, Uniform Securities Agent State Law Examination (Series 63 Exam) or the Series 66, Uniform Combined State Law Examination (Series 66 Exam). If the broker-dealer agent's most recent license terminated two or more years before the date of receipt by the Division of a new application, the agent will be required to retake the examination.

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

(3) Investment advisers and investment adviser representatives

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

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

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

~~(3)(b)]-Grandfathering~~

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

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

(3)(c) Waivers. The investment adviser or investment adviser representative may request a waiver of the examination requirement [shall not apply to an] if such individual [who] currently holds one of the following professional designations:

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

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

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

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

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

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

(D) Electronic Filing

(1) The Division designates and authorizes the web-based CRD to receive and store filings and collect related fees on behalf of the Division whenever this rule requires filings to be submitted to the CRD.

(2) The Division designates and authorizes the web-based IARD to receive and store filings and collect related fees on behalf of the Division whenever this rule requires filings to be submitted to the IARD.

(3) Unless otherwise provided, all broker-dealer, agent, investment adviser, and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the Division pursuant to this rule, shall be filed electronically with and transmitted to either the CRD or the IARD as designated in this rule. The following additional conditions relate to such electronic filings:

(3)(a) When a signature or signatures are required by the particular instruction of any filing to be made through the CRD or the IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to the CRD or the IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

(3)(b) Solely for purposes of a filing made through the CRD or the IARD, a document is considered filed with the Division when all fees are received and the filing is accepted by the CRD or the IARD on behalf of the state.

(4) Notwithstanding Subparagraph (D)(3), the electronic filing of any particular document shall not be required until such time as the CRD or the IARD provides for receipt of such filings. Any documents required to be filed with the Division, the CRD or the IARD that are not permitted to be filed with or cannot be accepted by the CRD or the IARD shall be filed directly with the Division in either a paper format or as an attachment to an email to the Division in a format that can be viewed by the Division.

(5) This Subparagraph provides two "hardship exemptions" from the requirements to make electronic filings as required by this rule.

(5)(a) Temporary Hardship Exemption.

(5)(a)(i) Investment advisers licensed or required to be licensed under the Act who experience unanticipated technical difficulties that prevent submission of an electronic filing to the IARD may request a temporary hardship exemption from the requirements to file electronically.

(5)(a)(ii) To request a temporary hardship exemption, the investment adviser must:

(5)(a)(ii)(aa) File Form ADV-H in paper format with the state securities agency where the investment adviser's principal place of business is located, no later than one business day after the filing that is the subject of the Form ADV-H was due; and

(5)(a)(ii)(bb) Submit the filing that is the subject of the Form ADV-H in electronic format to the IARD no later than seven business days after the filing was due.

(5)(a)(iii) The temporary hardship exemption will be deemed effective upon receipt by the Division of the complete Form ADV-H. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the Division.

(5)(b) Continuing Hardship Exemption.

(5)(b)(i) A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this rule are prohibitively burdensome.

(5)(b)(ii) To apply for a continuing hardship exemption, the investment adviser must:

(5)(b)(ii)(aa) File Form ADV-H in paper format with the Division at least twenty business days before a filing is due; and

(5)(b)(ii)(bb) If a filing is due to more than one state securities agency, the Form ADV-H must be filed with the state securities agency where the investment adviser's principal place of business is located. The state securities agency who receives the application will grant or deny the application within ten business days after the filing of Form ADV-H.

(5)(b)(iii) The exemption is effective upon approval by the Division. The time period of the exemption may be no longer than one year after the date on which the Form ADV-H is filed. If the Division approves the application, the investment adviser must, no later than five business days after the exemption approval date, submit filings to the Division in paper format along with the appropriate processing fees for the period of time for which the exemption is granted.

(5)(c) The decision to grant or deny a request for a hardship exemption will be made by the state securities agency where the investment adviser's principal place of business is located, which decision will be followed by the state securities agency in the other state(s) where the investment adviser is licensed.

~~[(D)]~~(E) Correcting amendments

(1) At a time when a material change occurs:

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

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

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

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

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

(1)(f) a federal covered adviser must promptly file amendments to SEC Form ADV - Uniform Application for Investment Adviser Registration with the IARD.

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

~~[(E)]~~ Designation of CRD

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

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

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

(F) Service of process

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

(G) License transfer

(1) A broker-dealer or broker-dealer agent may transfer a license by following CRD procedures. The Division recognizes and participates in the NASAA/CRD Temporary Agent Transfer ("TAT") program and will honor transfers effected through TAT procedures.

R164-4.4. Minimum Financial Requirements and Financial Reporting Requirements of Licensed Broker-Dealers and Investment Advisers.

(A) Authority and Purpose

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

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

(B) Definitions

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

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

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

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

(C) Broker-Dealer - Minimum Financial Requirements

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

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

(3) To the extent the SEC promulgates changes to the above referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Division

for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended SEC rule.

(D) Investment Adviser - Minimum Financial Requirements

(1) Except as provided in subparagraph (D)(4), unless an investment adviser posts a bond pursuant to Section R164-4-5, an investment adviser licensed or required to be licensed under the Act who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000, and every investment adviser licensed or required to be licensed under the Act who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of \$10,000.

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

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

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

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

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

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

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

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

R164-4.5. Bonding Requirements for Broker-Dealers, Broker-Dealer Agents, Issuer-Agents, and Investment Advisers.

(A) Authority and Purpose

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

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

(B) Definitions

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

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

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

(C) Bonding requirements for broker-dealers

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

(2) Every broker-dealer licensed or required to be licensed under this Act whose business is exclusively intrastate, who does not make use of any facility of a national securities exchange and who is not registered under section 15 of the Securities Exchange Act of

1934, shall be bonded in an amount of not less than \$100,000 by a bonding company qualified to do business in this state.

(D) Bonding requirements for broker-dealer agents

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

(E) Bonding requirements for issuer-agents

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) Bonding requirements for certain investment advisers

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Authority and purpose

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

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

(B) Definitions

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

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

(C) Notice Filings

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

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

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

(D) Notice filing renewals

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

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

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

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

(E) Until IARD provides for the filing of Part 2 of Form ADV, the Division will deem filed Part 2 of Form ADV if a federal covered adviser provides, within 5 days of a request, Part 2 of Form ADV to the Division. Because the Division deems Part 2 of the Form ADV to be filed, a federal covered adviser is not required to submit Part 2 of Form ADV to the Division unless requested.

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

(A) Authority and purpose

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

(2) This rule clarifies when broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives are transacting business in this state for purposes of

Section 61-1-4 by distributing information on available products and services through Internet Communications available to persons in this state.

(B) Definitions

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

(2) "Internet" means the global information system comprised of independent computer networks which are interconnected and share information without the use of a central processing center by use of the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, to include without limitation, the World Wide Web, proprietary or "common carrier" electronic delivery systems, or similar medium.

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

(C) Licensing Exclusion

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

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

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

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

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

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

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

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

(4)(b) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated retains responsibility for reviewing

and approving the content of any Internet Communication by a BD agent or IA rep;

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

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

(D) Limitations of Exclusion

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

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

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

(A) Authority and purpose

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

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

(B) Definitions

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

(C) Broker-Dealer Exclusion

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

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

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

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

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

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

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

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

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

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

(D) Transactional Securities Exemption

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

KEY: securities, securities regulation

~~[March 20, 2000]~~ **October, 2002**

Notice of Continuation December 29, 1997

61-1-3

61-1-4

61-1-5

61-1-6

61-1-13

61-1-14

61-1-24



Community and Economic
Development, Community
Development, Fine Arts

R207-1

Utah Arts Council General Program
Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 25190

FILED: 08/20/2002, 16:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This is a nonsubstantive amendment to clarify language.

SUMMARY OF THE RULE OR CHANGE: Two additions and one wording change for language clarification.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 9-6-205

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This amendment is for clarification of language only, and will have no fiscal impact.
- ❖ LOCAL GOVERNMENTS: This amendment is for clarification of language only, and will have no fiscal impact.
- ❖ OTHER PERSONS: This amendment is for clarification of language only, and will have no fiscal impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment is for clarification of language only, and will have no fiscal impact.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment is for clarification of language only, and will have no fiscal impact.

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

COMMUNITY AND ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT, FINE ARTS
617 E SOUTH TEMPLE
SALT LAKE CITY UT 84102-1177, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jennifer Broschinsky at the above address, by phone at 801-236-7548, by FAX at 801-236-7556, or by Internet E-mail at jbroschinsky@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 10/15/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2002

AUTHORIZED BY: Bonnie Stephens, Director

R207. Community and Economic Development, Community Development, Fine Arts.

R207-1. Utah Arts Council General Program Rules.

R207-1-1. Utah Arts Council General Program Rules.

The Utah Arts Council shall set forth in printed and/or electronic materials: standards and procedures, eligibility requirements, fees, restrictions, panel and committee members, deadlines for submitting applications, requirements pertaining to specific ~~[events]~~ opportunities, dates of events, liability, and other information which is available to the public. The Utah Arts Council has the authority to award prizes, commissions, grants and fellowships.

KEY: art in public places, art preservation, art financing, performing arts

~~[1987]~~ **2002**

Notice of Continuation August 20, 2002

9-6-205



Community and Economic
Development, Community
Development, Fine Arts

R207-2

Policy for Commissions, Purchases,
and Donations to, and Loans from, the
Utah State Art Collections

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25191

FILED: 08/20/2002, 16:29

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To clarify language. The amendment does not alter current agency practices and is for clarification only.

SUMMARY OF THE RULE OR CHANGE: Change of wording regarding Public Art commissions and clarification of loan policies for artwork.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 9-6-205

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This amendment is for clarification of language only, and will have no fiscal impact.
- ❖ LOCAL GOVERNMENTS: This amendment is for clarification of language only, and will have no fiscal impact.
- ❖ OTHER PERSONS: This amendment is for clarification of language only, and will have no fiscal impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment is for clarification of language only, and will have no fiscal impact.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment is for clarification of language only, and will have no fiscal impact.

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

COMMUNITY AND ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT, FINE ARTS
617 E SOUTH TEMPLE
SALT LAKE CITY UT 84102-1177, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jennifer Broschinsky at the above address, by phone at 801-236-7548, by FAX at 801-236-7556, or by Internet E-mail at jbroshinsky@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 10/15/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2002

AUTHORIZED BY: Bonnie Stephens, Director

R207. Community and Economic Development, Community Development, Fine Arts.**R207-2. Policy for Commissions, Purchases, and Donations to, and Loans from, the Utah State Art Collections.****R207-2-1. Policy for Commissions, Purchases, and Donations to, and Loans from, the Utah State Art Collections.**

In order to maintain the quality and integrity of the Utah State Art Collections, the following policies have been adopted:

a. All works of art accepted into the Utah State Art Collections must be approved through the appropriate channels (Visual Arts Committee, Public Art Selection Committees, Folk Arts Selection Committee). This policy applies to commissions, purchases and donations of artwork. When art is added to any of the Utah State Art Collections, the Utah Arts Council will assume responsibility for cataloging, conserving, insuring, storing, and displaying that work. The criteria for selecting works for the Utah State Art Collections will be based on the quality of the work, ~~[appropriateness to the site for Public Art pieces,]~~ and its role in filling historical, ~~[media]~~ cultural, and stylistic gaps. Public Art commissions will be based on the aesthetic value, appropriateness to the site or facility and budget.

b. If other state agencies are approached by an individual or organization wishing to donate a work of art, that agency ~~[should]~~ may contact the Utah Arts Council to receive approval through the appropriate channels (see "a" above). If the agency does not contact the Utah Arts Council, or if the donation is not accepted by the Utah Arts Council, that agency becomes responsible for insuring and conserving the donated work of art, which is not then part of the Utah State Art Collections.

c. Loans of artwork from the Utah State Art Collections ~~[to state agencies]~~ must ~~[also]~~ be approved through appropriate channels ~~[at the Utah Arts Council]~~ in order for them to be insured by the state's Risk Management Division through the Utah Arts Council. ~~[Otherwise, insurance will be the responsibility of the state agency which accepts the loan.]~~ Replacement value insurance for non-state agencies, by agreement or default, is born by the institution receiving the loan. Works of art loaned directly to the Utah Arts Council for ~~[Traveling Exhibitions]~~ exhibition or other purposes are fully insured by the Utah Arts Council. Public Art ~~[Program artwork]~~ commissions are ~~[is]~~ insured by the state's Risk Management Division through the Utah Arts Council and the host agency. ~~[through the site where the art is located.]~~

KEY: art loans, art donations, art in public places, art work
[September 3, 1998]2002

Notice of Continuation August 20, 2002
9-6-205



Education, Administration
R277-106
 Professional Practices Advisory
 Commission Appointment Process

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 25220
 FILED: 09/03/2002, 17:50

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to make the rule consistent with the law and allow for more information prior to the recommendation of potential Utah Professional Practices Advisory Commission (UPPAC) members.

SUMMARY OF THE RULE OR CHANGE: Changes include adding the required community members and providing more specific information that may be gathered on potential UPPAC members.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-6-303(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** All of the costs associated with the rule change are minimal, and will be covered by the Utah State Office of Education.
- ❖ **LOCAL GOVERNMENTS:** There are no anticipated cost or savings to school districts. All costs are covered by the state agency.
- ❖ **OTHER PERSONS:** There are no anticipated cost or savings to other persons. All costs are covered by the state agency.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs to individuals for participation on this Commission or in selection of Commission members.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses. Steven O. Laing

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

EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY UT 84111-3272, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2002

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R277. Education, Administration.

R277-106. Utah Professional Practices Advisory Commission Appointment Process.

R277-106-1. Definitions.

A. "UPPAC or Commission" means the Utah Professional Practices Advisory Commission as defined and authorized under Section 53A-6-301 et. seq.

B. "Board" means the Utah State Board of Education.

C. "Superintendent" means the State Superintendent of Public Instruction.

D. "Nomination petition" means:

(1) written and signed statement by the Superintendent of the school district in which the educator is currently employed, that the Superintendent understands the time commitment of UPPAC members and supports the educator in applying for one three-year term as identified in statute. If the applicant is a superintendent, the chair of the local school board shall provide a statement of support for the educator;

(2) written and signed statement by the educator's building principal that the principal understands the time commitment of UPPAC members and supports the educator in applying for one three-year term. If the applicant is a principal, the applicant shall include a statement of understanding of the time commitment in the personal statement provided by the applicant;

(3) written and signed personal statement by the applicant expressing the applicant's desire to serve as a UPPAC member, a summary of the applicant's professional experience, including associations and professional affiliations; and

(4) the applicant's vita.

R277-106-2. Authority and Purpose.

A. This rule is adopted pursuant to Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-6-303(1)(a) which directs the Board to adopt rules establishing procedures for nominating and appointing Commission members, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish nomination and appointment procedures for UPPAC members.

R277-106-3. UPPAC Notification, Nomination and Application Process.

A. The UPPAC Executive Secretary shall notify school districts and education organizations in writing of openings on UPPAC for the upcoming term by May 1 of the year in which the Commission vacancies shall be filled by appointment by the Superintendent.

B. As provided under Section 53A-6-303(1)(b), nomination petitions shall be filed with the Superintendent.

R277-106-4. UPPAC Selection Process.

A. The Superintendent shall provide all complete and properly filed petitions to the UPPAC Executive Secretary for review and the

Executive Secretary's recommendation(s) prior to May 20 of the year in which membership on the Commission is sought.

(1) The Executive Secretary may seek additional information to provide to the Superintendent about the experience and qualification of UPPAC applicants.

~~(1)2~~ Recommendations shall maintain a representative balance of six teachers and ~~five~~three other educators.

~~(2)3~~ Recommendations shall give consideration to rural/urban, elementary/secondary and geographical balance of Commission members.

B. The Superintendent shall make Commission appointments prior to June 1 of the year in which Commission members shall begin serving.

C. Two community members shall be selected under Section 53A-6-302(1). Their terms shall be staggered.

~~(C)D.~~ If current Commission members desire to serve for a second term, the member shall indicate the desire to serve an additional term in writing to the Superintendent prior to May 15 of the year in which the member's term expires.

D. The applications(s) of (a) Commission member(s) seeking reappointment shall be considered for recommendation at the same time that new appointments are considered.

KEY: professional competency, professional practices*

~~October 5, 1998~~2002

Art X Sec 3

53A-6-303(1)(a)

53A-1-401(3)



Education, Administration
R277-444
 Distribution of Funds to Arts and
 Sciences Organizations

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 25226
 FILED: 09/03/2002, 18:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to update and clarify terminology and to make the rule consistent with 2002 language in S.B. 1, Appropriations Act, 2002 General Session. (DAR NOTE: S.B. 1 is found at UT L 2002 Ch 277, and was effective July 1, 2002.)

SUMMARY OF THE RULE OR CHANGE: Definitions are clarified and updated; only organizations identified by the Legislature will receive funding and documentation of services is clarified.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget beyond the 2002 Legislative appropriation.

❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to school districts. Funds are appropriated to the Utah State Office of Education for specific arts groups.

❖ OTHER PERSONS: There are no anticipated cost or savings to other persons. Funding from the Legislature for arts groups is to the Utah State Office of Education.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This process will be orchestrated by the Utah State Office of Education. There is no cost for individuals to comply.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses. Steven O. Laing

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

EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY UT 84111-3272, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2002

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R277. Education, Administration.

R277-444. Distribution of Funds to Arts and Sciences Organizations.

R277-444-1. Definitions.

A. "Arts organization" means a non-profit organization that provides artistic (dance, music, drama, art) services, performances or instruction to the Utah community.

~~(G)B.~~ "Board" means the Utah State Board of Education.

~~(F)C.~~ "Hands-on activities" means activities that include active involvement of students with presenters, ideally with materials provided by the organization.

~~(C)D.~~ "Non-profit organization" means an organization no part of the income of which is distributable to its members, directors or officers; a corporation organized for other than profit-making purposes.

~~(H)E.~~ "Request for proposal (RFP)" means a competitive application process used to identify programs that best meet requirements established by the Board.

F. "School visits" means performances, lecture demonstrations/presentations, in-depth instructional workshops, residencies, side-by-side mentoring, and exhibit tours by professional arts and science groups in the community.

[B]G. "Science organization" means a non-profit organization that provides science-related services, performances or instruction to the Utah community.

[E]H. "State Core Curriculum" means ~~minimum academic standards provided through courses as established by the Board which shall be mastered by all students K-12 as a requisite for graduation from Utah's secondary schools~~ those standards of learning that are essential for all Utah students, as well as the ideas, concepts, and skills that provide a foundation on which subsequent learning may be built, as established by the Board.

[D]I. "USOE" means the Utah State Office of Education.

R277-444-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide criteria for the distribution of funds appropriated by the Utah Legislature to enhance the State Core Curriculum through school visits ~~by professional arts and science groups in the community~~.

R277-444-3. Eligibility of Organizations.

A. ~~Only non-profit organizations are eligible. Individuals are not eligible. Evidence of non-profit status shall be provided if requested by USOE staff.~~

~~B. Only organizations that have existed for at least three years with proven or demonstrated excellence in their discipline are eligible for funding. Evidence of excellence may be based upon:~~

~~(1) a peer review;~~

~~(2) proven fiscal responsibility; or~~

~~(3) receipt of national grant awards (e.g. National Endowment for the Arts, National Endowment for the Humanities, National Science Foundation)~~

~~C. Organizations shall receive funding only if they have the demonstrated ability to share their discipline(s) creatively and effectively in educational settings.~~

~~D. First consideration shall be given to Utah-based organizations.~~

~~E. All s]Scientists, artists, or entities hired/sponsored for services in the schools, directly or indirectly through coordinating organizations, are always subject to the same review and approval process.~~

~~B. For FY 2002-2003, only line item organizations identified in S.B. 1, Appropriations Act, from the 2002 General Session, shall be eligible for funding as directed by the Legislature.~~

R277-444-4. Applications and Funding.

A. Applications shall be provided by the USOE.

B. Organizations shall submit applications to the USOE Fine Arts and Science Specialists who shall make final funding recommendations to the USOE Finance Committee by ~~September~~ August 3[0] of the school year in which the money is available.

~~C. Organizations may submit plans based on a one, two or three year cycle as determined between the applicant and the USOE.~~

~~D. Organizations may reapply for funding when the terms of their applications have concluded.~~

~~E. Line item organizations in this program may not apply for the RFP funding portion.]~~

R277-444-5. Accountability.

A. Organizations may be visited by USOE staff prior to funding or at school presentations during the funding cycle to evaluate the effectiveness and preparation of the organization.

B. Organizations that receive arts/science funding shall submit an annual evaluation report by ~~September~~ July 1 of the fiscal year in which the award was made.

C. The year-end report shall include:

(1) a budget expenditure report and income source report using a form provided by the USOE;

(2) a narrative description of all services provided by the organization;

(3) documentation of collaboration in planning content related to the State Core Curriculum and visit preparation/follow up with the USOE and school communities;

(4) documentation that all school districts and schools have been offered opportunities for participation with the arts/science organization over a three year period to the extent practicable.

~~(3)5~~ copies of any and all materials developed, as requested;

~~(4)6~~ record of the dates and places of all services rendered, the number of instruction/performance hours per district and school, ~~number of artist hours provided,~~ and the number of students and teachers served; and

~~(5)7~~ examples of individual and overall program impact on school science or art programs or curricula.

~~(6)8~~ a report and accounting of fees charged, if any, to recipient schools, districts, or organizations.

D. The USOE may require additional evaluation or audit procedures from the grant recipient to demonstrate use of funds consistent with the law and Board rules.

E. Every four years, beginning in July 1998, all line item organizations shall reapply under the USOE RFP process to reestablish their line item status for funding consistent with funds received the previous year.

F. The USOE may require additional evaluation or audit procedures from arts/science organizations to demonstrate use of funds consistent with the law and this rule.

R277-444-6. Variations or Waivers.

A. No deviations from the approved and funded proposal shall be permitted without prior approval from the appropriate USOE specialist or his designee.

B. The USOE may require requests for variations to be submitted in writing.

C. The nature and justification for any deviation or variation from the approved proposal shall be reported in the year-end report.

D. Any variation shall be consistent with law and the purposes of this rule.

KEY: arts, science, curricula

~~December 5, 2001~~2002

Notice of Continuation October 13, 2000

Art X Sec 3

53A-1-401(3)



Education, Administration
R277-469
 Instructional Materials Commission
 Operating Procedures

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 25219
 FILED: 09/03/2002, 17:49

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to reflect changes in S.B. 99 from the 2002 Legislative Session; to provide Utah Performance Assessment System for Students (U-PASS) emphasis; and to update terminology. (DAR NOTE: S.B. 99 is found at UT L 2002 Ch 299, and was effective May 6, 2002.)

SUMMARY OF THE RULE OR CHANGE: The rule removes "pilot program" language; allows schools and districts to select their own materials with a local review committee; and changes terminology from "required" to "recommended."

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There are no anticipated cost or savings to state budget. The Instructional Materials Commission will still meet to make recommendations which are very important to small school districts.
- ❖ LOCAL GOVERNMENTS: School districts and schools may have increased costs because they may not be able to purchase books in quantities that provide for the lowest price, may not be able to "lock in" a price for a number of years, or receive supplemental materials that are provided for large orders.
- ❖ OTHER PERSONS: There are no anticipated cost or savings to other persons. Individuals do not purchase textbooks.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Changes to this rule may cost districts/schools, but there are no compliance costs to individuals.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses. Steven O. Laing

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

EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY UT 84111-3272, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2002

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R277. Education, Administration.

R277-469. Instructional Materials Commission Operating Procedures.

R277-469-1. Definitions.

~~[A.]~~ "Pilot program" or "pilot use" means the use by a school or schools on a limited basis of previously unreviewed instructional materials and materials not yet submitted to the Instructional Materials Commission for formal review, consistent with Section R277-469-9.]

~~[A.]~~ "Advanced placement materials" means materials used for the College Board Advanced Placement Program and classes. The program policies are determined by representatives of member institutions. ~~[Its o]Operational services are provided by the Educational Testing Service. The program provides practical descriptions of college-level courses to interested schools and student test results based on these courses to colleges of the student's choice. Participating colleges grant credit or appropriate placement, or both, to students whose test results meet standards prescribed by the college.~~

~~B. "Pilot approval" means approval authorized under Section R277-469-10 using the form developed and provided by the USOE.]~~

~~[K]B. "ASCII" means American Standard Code for Information Interchange from which Braille versions of all or part of the instructional materials can be produced.~~

~~[E]C. "Board" means the Utah State Board of Education.~~

~~[G]D. "Commission" means the Instructional Materials Commission.~~

~~[E]E. "Instructional materials" means systematically arranged text materials, in harmony with the [State-]Core [Curriculum] framework and courses of study, which may be used by students or teachers or both as principal sources of study and which cover any portion of the course. These materials:~~

~~(1) shall be designed for student use; and~~

~~(2) may be accompanied by or contain teaching guides and study helps;~~

~~(3) shall appear on the list of state adopted instructional materials or be approved for pilot use by the Instructional Materials Commission].~~

~~[J]E. "Integrated instructional program" means any combination of textbooks, workbooks, software, videos, transparencies, or similar resources used for classroom instruction of students.~~

~~[H]G. "International Baccalaureate" means college level work, limited in subject areas, which balances humanities and sciences in an interdisciplinary, global academic program that is~~

both philosophical and practical. This multi-cultural experience emphasizes analytical and conceptual skills and aesthetic understanding for advanced students.

~~[H]. "Previously unreviewed materials" means instructional materials that have neither been approved by the Instructional Materials Advisory Commission through the formal approval process nor approved as pilot materials under Section R277-469-9.]~~ [H]. "Not recommended materials" means instructional materials which have been reviewed by the Commission but not recommended.

[D]. "State Core Curriculum (Core)" means minimum academic standards provided through courses as established by the Board which shall be completed by all students K-12 as a requisite for graduation from Utah's secondary schools.

[F]. "USOE" means the Utah State Office of Education.

R277-469-2. Authority and Purpose.

A. This rule is authorized under Utah Constitutional Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-14-101 through 53A-14-106 which directs the Board to appoint an Instructional Materials Commission and directs the Commission to ~~recommend~~ evaluate instructional materials for ~~adoption~~ recommendation by the Board, and by Subsection 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions, operating procedures and provisions for ~~[final, pilot, and limited approvals]~~ recommending ~~[of]~~ instructional materials for use in Utah public schools.

R277-469-3. Use of State Funds for Instructional Materials.

A. Districts may use funds designated for state instructional materials only:

(1) for materials on the ~~[approved]~~ recommended instructional materials list;

~~— (2) for materials approved under Section R277-469-10 for pilot use; or~~

~~(3)~~ (2) for advanced placement, International Baccalaureate, concurrent enrollment, and college-level course materials. Use of these materials may require parental permission consistent with R277-474.

(3) for instructional materials selected by a school or district:

(a) consistent with established local board procedures and timelines; and

(b) consistent with Section 53A-13-101(1)(c)(iii); and

(c) that support U-PASS requirements.

B. Schools or school districts that use any funding source to purchase materials that have not been ~~[approved through the formal Commission process]~~ recommended or selected consistent with law or this rule, may have funds withheld to the extent of the actual costs of those materials pursuant to Subsection 53A-1-401(3).

C. Free instructional materials:

(1) may be used as student instructional materials only consistent with the law and this rule; and

(2) shall be reviewed and ~~[approved]~~ recommended by the Commission or the school district[s] prior to use.

R277-469-4. Instructional Materials Commission Members Terms of Service.

A. Members shall be appointed from categories designated in Subsection 53A-14-102(1).

B. Members shall serve four year staggered terms~~[beginning with the 1998 appointments]~~ with the option, jointly expressed by the Commission member and the Commission, for reappointment for one additional term.

C. The Commission may establish subcommittees as needed.

R277-469-5. Commission Review of Materials.

~~— A. All materials used in Utah schools shall be reviewed by the Commission consistent with this rule or qualify under the exceptions to review categories of Section R277-469-6.]~~

[B]. The Commission may review materials in the following subject areas on timelines as determined by the Commission based upon district needs and requests and using forms and procedures provided by the USOE:

(1) Bilingual education/English as a second language (elementary and secondary),

(2) Character education (elementary and secondary),

(3) Driver education (secondary),

(4) Early childhood education,

(5) Fine arts (elementary and secondary),

(6) Foreign language (elementary and secondary),

(7) Health education and fitness (elementary and secondary),

(8) Information technology (elementary and secondary),

(9) Language arts (elementary and secondary),

(10) Mathematics (elementary and secondary),

(11) Science (elementary and secondary),

(12) Social studies (elementary and secondary),

(13) Applied technology/vocational subjects,

(14) Technology education,

(15) Technology and industrial arts, and

(16) Special education/resource materials~~[- and~~

~~— (17) Human sexuality instructional materials].~~

[C]. The Commission's ~~[determination]~~ designation of a ~~[materials]~~ subject area category for review purposes is final.

[D]. ~~[Unless materials meet the exceptions of this rule, or are reviewed consistent with this rule by the Commission, they may not be purchased with state or federal funds.~~

~~— E.]~~ Commission review of material ~~[is available]~~ takes place in April and October of each year.

R277-469-6. Review and Adoption Categories.

A. Materials may be considered for review and designated under the following categories. They may be purchased with state funds and used as follows:

(1) ~~[Adopted]~~ Recommended Primary: Instructional materials that ~~[- may be used or purchased and]~~

(a) are in alignment with content, philosophy and instructional strategies of the [State]Core[-Curriculum which-];

(b) may be used by students as princip[al] sources of study[and];

(c) provide comprehensive coverage of course content; and

(d) support U-PASS requirements.

(2) Recommended Limited: Instructional materials that may be used or purchased and are in limited alignment with the ~~[State]Core [Curriculum-] or U-PASS requirements~~ or are narrow or restricted in their scope and sequence. If school districts or schools select and purchase materials designated under this category, it is recommended that they have a plan for using appropriate supplementary materials assuring coverage of Core requirements.

~~— Use of these materials should be supplemented with additional materials to assure State Core Curriculum coverage.]~~

(3) Recommended Teacher Resource: [~~These~~]Instructional materials that may be used or purchased for or by teachers for use as resource material only.

(4) Recommended Student Resource: Instructional materials aligned to the Core that are developmentally appropriate, but not intended to be the primary instructional resource. These materials may provide valuable content information for students.

~~(4)5~~ Reviewed, but not [~~Adopted~~]Recommended: Instructional materials [~~may not be used or purchased~~]that [~~are~~]may not [~~in~~]be align[ment]ed with the [~~State~~]Core[~~-Curriculum~~], may be inaccurate in content, include misleading connotations, contain undesirable presentation, are in conflict with existing law and rules, or are unsuitable for use by students. School districts are strongly cautioned against using these materials.[

~~(5) the following materials are not reviewed, but may be purchased consistent with the law and this rule and are subject to district review:~~

- ~~(a) advanced placement materials;~~
- ~~(b) International Baccalaureate materials;~~
- ~~(c) concurrent enrollment materials;~~
- ~~(d) library or trade books;~~
- ~~(e) reference materials;~~
- ~~(f) teachers' professional materials which are not components of an integrated instructional program.]~~

(6) Not Sampled: Instructional materials that were included in the publisher bid but were not sampled to the USOE or the Commission.~~(6) Galley proofs or unfinished copies shall not be reviewed.~~

~~B. When an integrated instructional program, as determined by the Commission, is submitted for review, the program shall be reviewed and evaluated collectively. Review shall take place once all parts of the program are submitted.]~~

R277-469-7. Criteria for [Selection]Recommendation of Instructional Materials.

A. Instructional materials shall:

- (1) be consistent with [~~State~~]Core [~~Curriculum~~]and U-PASS requirements.
- (2) provide an objective and balanced viewpoint on issues.
- (3) include enrichment and extension possibilities.
- (4) be appropriate to varying levels of learning.
- (5) be accurate, factual and research-based.
- (6) be arranged chronologically or systematically, or both.
- (7) reflect the pluralistic character and culture of the American people and provide accurate representation of diverse ethnic groups.
- (8) be free from sexual, ethnic, age, gender or disability stereotyping.
- (9) [~~provide accurate representation of diverse ethnic groups.~~—(10)—]be of acceptable technical quality.

B. Upon request by the district, a publisher of instructional materials shall furnish computer diskettes of materials for literary subjects in the American Standard Code for Information Interchange (ASCII).

C. USOE monitoring:

- (1) The USOE may require a district to provide a report of instructional materials purchased by the district or a school in the previous [~~four~~]five years.
- (2) The USOE may initiate a formal or informal audit of instructional materials purchased.

~~R277-469-8. [Directives and Procedures for Publishing Companies Seeking to Sell Instructional Materials to School Districts]Agreements and Procedures for School Districts and Publishing Companies.~~

~~A. [The Commission shall not designate any individual, corporation or business as an official instructional materials depository.]A local board shall establish a policy for district and school selection and purchase of instructional materials. The policy shall include:~~

~~(1) procedures for schools to purchase instructional materials consistent with Section 53A-12-204(1);~~

~~(2) assurances signed by the district superintendent and school principal(s) that instructional materials not recommended by the Commission have been reviewed by the local board. The assurances shall be available for review by the Board upon request.~~

B. Publishers desiring to sell adopted materials to Utah schools or districts shall have adopted materials on deposit at an instructional materials [~~distributor~~]depository in the business of selling instructional materials to schools or districts in Utah.

C. Depository agreements may be made between publishers of materials and [~~local vendors~~]one or more depository.

D. The provisions of R277-469-8 shall not preclude publishers from selling instructional materials to schools or districts in Utah directly or through means other than the designated depository.

~~[D]E. Revised [adopted]recommended materials:~~

(1) If a revised edition of [~~adopted~~]recommended materials retains the original title and authorship, the publisher may request its substitution for the edition currently [~~adopted~~]recommended providing that:

- (a) the original contract price and contract date do not change and the original contract price applies for the substituted materials;
- (b) the revised edition is compatible with the earlier edition, permitting use of either or both in the same classroom;
- (c) a sample copy of the revised edition is provided to the USOE Instructional Materials Specialist for examination purposes.

(2) If Subsection R277-469-8D is not satisfied, a new edition shall be submitted for [~~adoption~~]recommendation as new materials.

(3) The Commission shall make the final determination about the substitution of a new edition for a [~~n-adopted~~] previously recommended edition with assistance from the state subject area specialist.

~~[E]E. [Publishers' Increase in Contract Prices~~

~~(1) Publishers may request one increase in contract prices to be effective during either the third or fourth year of the contract for instructional materials adopted by the Commission.~~

~~(2) Price increases shall be limited to the consumer price index (CPI) for the last fiscal year unless good cause is demonstrated consistent with designated deadlines and forms provided by the Commission.]A publisher's contract price for materials recommended by the Commission shall apply for five years from the contract date.~~

~~[R277 469 9. Pilot Use of Instructional Materials.~~

~~A. Pilot approval for previously unreviewed instructional materials shall be given for no more than:~~

- ~~(1) ten percent of the districts in the state; and~~
- ~~(2) ten percent of the schools in a single district with the grade levels (elementary, junior high/middle or high school) for which the materials are designated;~~

~~— B. Publishers shall present a completed pilot application form when applying to the USOE for pilot approval.~~

~~— C. Publishers shall present proof of pilot approval from the USOE to the school or district prior to distribution of materials.~~

~~— D. The Commission shall not review materials submitted by a publisher who has acted in violation of this rule for a two-year period beginning January 1 of the year following the year in which the violation occurred.~~

~~— E. Samples (defined as one copy or one set of an instructional program) may be given to a school or district upon request by administrators or teachers for preview purposes only.~~

~~— F. Publishers, in cooperation with districts using the materials, may be required to provide an evaluation to the USOE completed by the district of pilot materials based on criteria and forms provided by the USOE.~~

~~— G. Pilot materials may only be used for one school year anywhere in the state under pilot approval prior to seeking final approval through the formal Commission process.~~

~~— H. The USOE may require a report of pilot program materials used in district schools in the past year.~~

~~— I. Districts or schools or both shall assume any costs of pilot materials not approved for further use by the Commission.~~

~~— J. All materials used in pilot programs that are not approved through the Commission process for continued use shall be collected by the district at the end of the pilot period and disposed of.]~~

R277-469-~~[4]9~~. Request for Reconsideration of Recommendation.

A. A request for reconsideration is an an ~~[single]~~ additional opportunity provided to a school district, school or publisher for ~~[each submission and]~~ review of instructional materials ~~[with which]~~ when the school district, school or the publisher disagrees with the initial Commission recommendation.

B. The request for reconsideration procedure is as follows: [
~~(1) A request for reconsideration shall be received by the USOE only from a publisher.]~~

~~(2) [The] A school district, school or publisher shall receive the evaluations and recommendations from the USOE of the initial review.~~

~~(3) [The] A school district, school or publisher shall have 30 days to respond to the evaluation and request to have materials reviewed again during the next [adoption] review cycle.~~

~~(4) During the period of the reconsideration request, materials shall be marked as tentative and shall not be given official status. These materials shall not be posted to the Internet site until [approved] recommended through the official Commission process.~~

~~(5) A school district, school or publisher may be asked to send a second set of sample materials to the USOE.~~

~~(6) Any written information provided by [the] a school district, school or publisher shall be available to the advisory committees during the second review. [~~

~~(7) After the second review by the subject area advisory committee, the publisher shall be notified of the completion of the appeals process and the decision after the scheduled Board meeting.~~

~~(8) Materials shall be voted on by the Commission during the next scheduled meeting. A revised status of instructional materials shall be made after Board approval the following month.]~~

(6) After the second review by the subject area advisory committee, the advisory committee's recommendation shall be voted on by the Commission at the next scheduled meeting.

(7) If the Commission votes to change the recommendation, the Board shall consider the Commission's revised recommendation at the next scheduled Board meeting and make a final decision.

(9) [The] A school district, school or publisher shall receive [a second letter stating] written notification that a recommendation [is official] is final and shall receive a copy of the new evaluation. Evaluations may now appear on the Internet if materials are [adopted] recommended. [

C. Publishers shall be given only one opportunity to request that materials be reconsidered.]

KEY: instructional materials

[March 6, 2001] 2002

Art X, Sec 3

53A-14-101 through 53A-14-106

53A-1-401(3)

Education, Administration

R277-475

Patriotic Education

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25218

FILED: 09/03/2002, 17:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to include a provision that Utah public schools must follow regarding displaying the United States national motto, IN GOD WE TRUST, in one or more prominent places in each school building as required by H.B. 79, 2002 General Session. (DAR NOTE: H.B. 79 is found at UT L 2002 Ch 124, and was effective May 6, 2002.)

SUMMARY OF THE RULE OR CHANGE: The amendment requires Utah public schools to display the United States national motto, consistent with state law.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-13-101.6

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to state budget. The state does not pay schools to display the United States national motto.

❖ LOCAL GOVERNMENTS: School districts/schools may have some very minimal costs to display the motto. The Legislature did not specify the size or type of display which could be satisfied with a computer printed page.

❖ OTHER PERSONS: There are no anticipated costs or savings to other persons. Only schools and/or school districts are required to display the motto.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Schools/school districts may have some very minimal costs to display the

motto, but the law could be satisfied with a very simple display.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses. Steven O. Laing

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2002

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R277. Education, Administration.

R277-475. Patriotic Education.

R277-475-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "Patriotic" means having love of and dedication to one's country.
- C. "Patriotic education" means the educational and systematic process to help students identify, acquire, and act upon a dedication to one's country.

R277-475-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, by Section 53A-13-101.6 which directs the Board to provide a rule for a program of instruction within the public schools relating to the flag of the United States, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards for patriotic education programs in the public schools.

R277-475-3. Patriotic Education.

Patriotic education shall be included and primarily taught in the social studies curricula of kindergarten through grade twelve. All educators shall have responsibility for patriotic education.

R277-475-4. Subject Matter.

A. Patriotic education programs shall meet the requirements of Sections 53A-13-101.6.

B. Students shall be taught the history of the flag, etiquette, customs pertaining to the display and use of the flag, and other patriotic exercises as provided in Sections 36 U.S.C. 170 to 177.

C. The school shall provide the setting and opportunities to teach by example and role modeling the following patriotic values associated with the flag of the United States:

- (1) the history of the flag;
- (2) etiquette surrounding the use of the flag;
- (3) customs pertaining to the display and use of the flag;
- (4) the Pledge of Allegiance;
- (5) etiquette surrounding the Pledge of Allegiance;
- (6) that each individual has the right to personal liberties associated with the flag so long as the rights of others are not violated; and
- (7) that individuals shall have freedom to exercise their values as they relate to the flag of the United States consistent with the law.

R277-475-5. Methods.

A. Education about the flag and the Pledge of Allegiance to the Flag shall be taught and modeled following the plan of the social studies Core Curriculum in grades kindergarten through six.

B. The Pledge of Allegiance to the Flag shall be recited by students at the beginning of the day in each elementary public school in the state.

C. Local school boards are encouraged to provide for the reciting of the Pledge of Allegiance to the Flag at least once a week at the beginning of the school day in secondary schools.

D. Students and parents shall be adequately notified of lawful exemptions to the requirement to participate in reciting the Pledge.

E. A student shall be excused from reciting the Pledge upon written request to the school from the student's parent or legal guardian.

F. Consistent with Section 53A-13-101.4(6), public schools shall display IN GOD WE TRUST, the national motto of the United States, in one or more prominent places in each school building.

KEY: education, curricula, patriotic education[*]

[September 1, 2000]2002

Art X Sec 3

53A-13-101.6

53A-1-401(3)



Education, Administration **R277-481** Charter School Accountability and Assistance

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 25225

FILED: 09/03/2002, 18:25

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes procedures for annual accountability of all charter schools and for on-site reviews of charter schools.

SUMMARY OF THE RULE OR CHANGE: The rule provides a schedule for charter school reviews, provide for a local review process and provide for discussion and review at the lowest possible level should there be problems with charter schools.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There may be some costs related to the State Board of Education establishing a Review Committee or staff time for technical assistance or termination process. (50 hours at \$30.00/hour = \$1500.00 - speculative at best)

❖ LOCAL GOVERNMENTS: There may be possible costs related to review committees and technical assistance. (50 hours at \$35.00/hour - speculative at best)

❖ OTHER PERSONS: There should be no costs to individuals for activities in public schools.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should be no compliance cost to individuals, but may be costs to state or local government as indicated above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses. Steven O. Laing

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2002

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R277. Education, Administration.

R277-481. Charter School Accountability and Assistance.

R277-481-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Charter schools" means schools acknowledged as charter schools by local boards of education under Section 53A-1a-515 and this rule or by the Board under Section 53A-1a-505.

C. "Chartering entity" means the Board or a local board of education, whichever approves the school's charter.

D. "Remediation plan" means a plan agreed to jointly between the chartering entity and a charter school. The plan shall identify operational inconsistencies with the school's charter or evidence of noncompliance with law, rules or district policies and methods and timelines for correcting the inconsistencies or noncompliance.

E. "Review Committee" means a group designated by the Board and assigned to review Board-chartered schools composed of representatives from at least the following:

(1) the Board;

(2) the district in which the charter school is located;

(3) USOE;

(4) parent(s) designated or approved by the State PTA president; and

(5) individual(s) designated by the governing board of the charter school under review.

F. "USOE" means the Utah State Office of Education.

R277-481-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution, Article X, Section 3 which vests general control and supervision over public education in the Board; Section 53A-1a-509 which requires annual progress reports from charter schools and provides for remedying deficiencies of charter schools by the Board; Section 53A-1a-510 which provides for termination or nonrenewal of a charter by the Board; Section 53A-1a-516 which provides for assistance to charter schools by the Board to the extent of funds available; and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish procedures for annual accountability of all charter schools and for onsite reviews of charter schools.

R277-481-3. Annual Progress Reports from Charter Schools.

A. A charter school governing board shall provide an annual progress report to:

(1) the school district in which the school is located;

(2) the Board; and

(3) the Legislature through the Education Interim Committee.

B. The report shall at a minimum include:

(1) a narrative describing the school's progress toward achieving its goals as described in the school's charter;

(2) financial records of the school, as required by Section 53A-1a-509(2)(b);

(3) the school's annual state performance report consistent with Section 53A-1-601 through 53A-1-611; and

(4) student enrollment information, as required and reported to the USOE.

C. All charter school assurances shall be maintained by the school and shall be available in a timely manner for review, upon request.

D. The report shall be provided annually before November 1.

R277-481-4. Charter School Reviews.

A. A Review Committee shall conduct site visits to Board-chartered schools.

B. The Review Committee shall submit its findings in writing to the Board and the charter school's governing board in a timely manner following the review.

C. Board-chartered and local board-chartered schools shall receive onsite visits at least:

(1) after the first three months of operation;

(2) during the third year of operation; and

(3) every fifth year thereafter.

D. A Board-chartered school that is under a plan for remediation shall be visited at least annually by a Review Committee.

E. Local boards that charter schools shall establish procedures and timelines to review charter schools. Local boards shall establish a local review committee or may request technical assistance of the Review Committee established under R277-481-1E.

R277-481-5. Notice of Noncompliance.

A. A Board-chartered or local board-chartered school that is found by the Review Committee or a local review committee through an annual progress report to be out of compliance with its charter shall be notified of the problems identified.

(1) The school shall be notified by certified mail within 30 days of the conclusion of the Review Committee or local review committee visit or the identification of the deficiency(s) and only following review and approval by the Board or local board of the Committee's findings.

(2) The notification shall include an explanation of the identified noncompliance.

(3) The governing board of a charter school shall have an opportunity to meet with appropriate representatives of the chartering entity to discuss the identified problems.

B. The charter school shall have at least 60 days following the written notification to demonstrate remediation of the identified noncompliance issues.

C. The chartering entity may designate a longer remediation period for some or all identified noncompliance issues. The remediation period shall provide for an education program for the charter school students that is consistent with state law.

D. Following a meeting between the Review Committee, and additional Board members, and USOE staff, the finding of noncompliance, as approved by the Board, is a final administrative determination.

E. A Board-chartered school may request technical assistance from the USOE to remedy deficiencies. The school remains primarily responsible to remedy deficiencies.

R277-481-6. Amending a Charter.

A. A charter may only be modified consistent with Section 53A-1a-508(4).

B. Any and all amendments to a charter shall be in writing and shall only become effective following approval by a majority of members of the chartering entity and the governing board of the charter school.

C. The chartering entity shall approve or reject proposed charter amendment(s) in a timely manner.

D. A charter school shall have an opportunity to discuss proposed amendments to the charter with the chartering entity prior to action on proposed amendment(s).

E. Absent agreement between a chartering entity and a charter school governing board concerning proposed amendments, a charter may not be amended.

R277-481-7. Compliance With and Termination of Charters.

A. The Board may terminate a Board charter immediately, consistent with Section 53A-1a-510(3)(a).

B. The Board may terminate a Board charter following a Review Committee review or official notification from the Board,

and a meeting, if requested, by the charter school's governing board for reasons identified in Section 53A-1a-510(1).

C. The school's governing board shall be notified consistent with Section 53A-1a-510(2) and shall have the opportunity for an appeal of the decision consistent with Section 53A-1a-510(2)(b).

D. If a charter is terminated, students shall receive educational services as provided under Sections 53A-1a-510(3)(b) and 53A-1a-510(4)(a).

E. Local boards that grant charters shall assure compliance with approved charters and have responsibility to terminate charters under Section 53A-1a-15(7) which specifies minimal procedures that shall be followed by local boards.

F. It is the responsibility of local boards to visit and review local board-chartered schools.

G. Chartering entities may consider all reasonable alternatives and provide all assistance possible to the extent of resources available prior to termination of a charter.

KEY: education, charter schools

2002

Art X, Sec 3

53A-1a-509

53A-1a-510

53A-1a-516

53A-1-401(3)



Education, Administration
R277-705
Secondary School Completion and
Diplomas

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25221

FILED: 09/03/2002, 17:53

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to add the Utah Basic Skills Competency Test (UBSCT) as a requirement for high school diplomas, and to provide for differentiated diplomas.

SUMMARY OF THE RULE OR CHANGE: The rule adds a Utah Basic Skills Competency Test (UBSCT) and other assessment definitions and provides for differentiated diplomas.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Utah State Board of Education does not award diplomas so there are no anticipated costs or savings to state budget.

❖ LOCAL GOVERNMENTS: There may be nominal costs of developing and implementing differentiated diplomas that would have to be absorbed by the local boards of education that award diplomas.

❖ OTHER PERSONS: There are no anticipated cost or savings to individuals because diplomas are awarded by local boards.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for individuals. There may be costs to local school boards for developing and implementing differentiated diplomas.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses. Steven O. Laing

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2002

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R277. Education, Administration.

R277-705. Secondary School Completion and Diplomas.

R277-705-1. Definitions.

In addition to terms defined in Section 53A-1-602:

A. "Accredited" means evaluated and approved under the Standards for Accreditation of the Northwest Association of Schools and Colleges or the accreditation standards of the Board, available from the Utah State Office of Education Accreditation Specialist.

B. "Board" means the Utah State Board of Education.

C. "Criterion-referenced test (CRT)" means a test to measure performance against a specific standard. The meaning of the scores is not tied to the performance of other students.

D. "Cut score" means the minimum score a student must attain for each subtest to pass the UBSCT.

E. "Demonstrated competence" means subject mastery as determined by school district standards and review. School district review may include such methods and documentation as: tests, interviews, peer evaluations, writing samples, reports or portfolios.

F. "Diploma" means an official document awarded by a public school district or high school consistent with state and district graduation requirements.

G. "GED Test" means the General Educational Development Test developed by the American Council on Education. Passing scores on test components acknowledge competency on the part of the test taker in GED test areas.

[G]H. "Individualized Education Program (IEP)" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with the Utah Special Education Rules and Part B of the Individuals with Disabilities Education Act (IDEA).

[H]I. "Secondary school" means grades 7-12 in whatever kind of school the grade levels exist.

[I]J. "Section 504 Plan" means a written statement of reasonable accommodations for a student with a qualifying disability that is developed, reviewed, and revised in accordance with Section 504 of the Rehabilitation Act of 1973.

[J]K. "Transcript" means an official document or record(s) generated by one or several schools which includes, at a minimum: the courses in which a secondary student was enrolled, grades and units of credit earned, UBSCT scores, citizenship and attendance records. The transcript is usually one part of the student's permanent or cumulative file which also may include birth certificate, immunization records and other information as determined by the school in possession of the record.

L. "Utah Performance Assessment System for Students (U-PASS)" means:

(1) systematic norm-referenced achievement testing of all students in grades 3, 5, 8, and 11 required by this part in all schools within each school district by means of tests designated by the Board;

(2) criterion-referenced achievement testing of students in all grade levels in basic skills courses, except as otherwise provided for science in Subsection (2), to include constructed responses to questions on a pilot basis for tests administered during the 2002-2003 and 2003-2004 school years, except science tests, and the inclusion of constructed response questions on all criterion-referenced tests, except science tests, administered during the 2004-2005 school year and for each year thereafter;

(3) a direct writing assessment in grades 6 and 9;

(4) beginning with the 2003-2004 school year, a tenth grade basic skills competency test as detailed in Section 53A-1-611; and

(5) beginning with the 2002-2003 school year, the use of student behavior indicators in assessing student performance.

[K]M. "Unit of credit" means credit awarded for courses taken upon school district/school authorization or for mastery demonstrated by approved methods.

N. "Utah Alternative Assessment (UAA)" means an assessment instrument for students in special education with disabilities so severe they are not able to participate in the components of U-PASS even with testing accommodations or modifications. The UAA measures progress on instructional goals and objectives in the student's individual education program (IEP).

[L]O. "Utah Basic Skills Competency Test (UBSCT)" means a test to be administered to Utah students beginning in the tenth grade to include at a minimum components on English, language arts, reading and mathematics. Utah students shall satisfy the requirements of the UBSCT in addition to state and district graduation requirements prior to receiving a basic high school diploma.

[M]P. "UBSCT Advisory Committee" means a committee that is advisory to the Board with membership appointed by the Board, comprised of not more than 15 members with the following representation:

- (1) parents;
- (2) one high school principal;
- (3) one high school teacher;

- (4) one district superintendent;
- (5) one Coalition of Minorities Advisory Committee member;
- (6) Utah State Office of Education staff;
- (7) one high school student;
- (8) business;
- (9) local board members;
- (10) higher education.

R277-705-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution, which places general control and supervision of the public schools under the Board; Section 53A-1-402(1)(b) and (c) which directs the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements; Sections 53A-1-603 through 53A-1-611 which direct the Board to adopt rules for the conduct and administration of ~~[the Utah Performance Assessment System for Students (U-PASS)]~~; and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide consistent definitions, provide alternative methods for students to earn and schools to award credit, to provide rules and procedures for the assessment of all students as required by law, and to provide for differentiated diplomas consistent with state law.

R277-705-3. Units of Credit.

A. Units of credit shall be awarded to students and be recorded on student transcripts for satisfaction of district-approved courses or subject matter.

B. Students may earn credit by any of the following methods, as designated by the school district:

- (1) successful completion, as determined by the school district or school, of secondary school courses;
- (2) successful completion, as determined by the school district or school, of concurrent enrollment classes consistent with Section 53A-17a-120;
- (3) demonstrated competence, as determined by the school district or school;
- (4) assessment, as determined by the school district or school;
- (5) review of student work or projects consistent with school district or school procedures and criteria; and
- (6) following successful completion, as determined by the school district or school, of correspondence or electronic coursework offered by an accredited education institution with prior approval by the school district or school to the extent practicable.

C. School districts or schools shall designate by written policy at least three methods by which students of the district may earn credit.

D. Schools shall accept credits from accredited education institutions:

- (1) schools shall accept credits from accredited schools when a student enrolls in the district for the first time;
- (2) districts may limit additional credits earned by students to courses or programs that are consistent with the student's Student Education Plan or Student Education/Occupation Plan as established by school, student and parent(s).

E. A school district or school has the final decision-making authority for the awarding of credit and shall do so consistent with state law and due process.

R277-705-4. Diplomas and Completion Certificates.

A. School districts or schools shall award diplomas and completion certificates.

B. School districts or schools shall offer differentiated diplomas to secondary school students and adults to include:

(1) a basic high school diploma awarded to a student[s] who ha[ve]s successfully completed all state and district course requirements for graduation and ha[ve]s passed all subtests of the UBSCT.

(2) alternative completion diploma awarded to a student who:

(a) ~~[A student may be awarded an alternative completion diploma if the student:~~

~~(i)]has met all state and district course requirements for graduation; and~~

~~(ii)]has provide[s]d documentation of at least three attempts to take and pass all subtests of the UBSCT unless the student has been out of the secondary school system at least 20 years or more;[and]~~

~~(iii)]c) has not passed all subtests of the UBSCT[-]; or~~

~~(b)]d) [A student may receive an alternative completion diploma if the student has completed graduation requirements consistent with his IEP and the student's IEP team has directed that the student be given an opportunity to demonstrate basic skills competency by means other than the UBSCT]is under an IEP and:~~

~~(i) has met all district and state course requirements for graduation; and~~

~~(ii) has provided documentation of at least three attempts to take and pass all subtests of the UBSCT, unless the IEP team determines that the student's participation in statewide assessment is through the UAA; and~~

~~(iii) has not passed all subtests of the UBSCT.~~

~~[e) A student may receive an alternative completion diploma if the student has completed graduation requirements consistent with his Section 504 plan and if the plan directs that the student be allowed to demonstrate basic skills competency by means other than the UBSCT.]C. In addition to R277-705-4B, school districts or schools shall also offer a high school equivalency diploma awarded to an individual eligible under R277-702 who has passing scores on all GED test components.~~

~~[C]D. School districts or schools shall offer a certificate of completion to students who have completed their senior year, are exiting the school system, and have not met all state or district requirements for a diploma.~~

R277-705-5. Students with Disabilities.

A. A [S]tudent[s] with disabilities served by special education programs shall satisfy high school completion or graduation criteria, consistent with state and federal law and the student's IEP.

B. A student may be awarded a certificate of completion or a diploma, consistent with state and federal law and the student's IEP or Section 504 Plan.

R277-705-6. Utah Basic Skills Competency Testing Requirements and Procedures.

A. All Utah public school students shall participate in Utah Basic Skills Competency testing, unless alternate assessment is designated in accordance with federal law or regulations or state law.

B. Timeline:

(1) Beginning with students in the graduating class of 200[5]6, UBSCT requirements shall apply.

(2) No student may take any subtest of the UBSCT before the tenth grade year.

(3) Beginning in the 200[3]4-200[4]5 school year, UBSCT shall be given twice annually.

(4) Tenth graders should first take the test in the second half of their tenth grade year.

(5) Exceptions may be made with documentation of compelling circumstances.

C. UBSCT components, scoring and consequences:

(1) UBSCT consists of subtests in reading, writing and mathematics.

(2) Students who reach the established cut score for any subtest in any administration of the assessment have passed that subtest.

(3) Students shall pass all subtests to qualify for a basic high school diploma.

(4) Students who do not reach the established cut score for any subtest shall have multiple additional opportunities to retake the subtest.

(5) Students who have not passed all subtests of the UBSCT by the end of their senior year may receive a certificate of completion or alternative completion diploma.

(6) The certificate of completion[~~4~~] or an alternative completion diploma may be converted to a basic high school diploma whenever the student completes all current state and district basic diploma requirements.

(7) Beginning in June 200[5]6, an adult student enrolled in a Utah school district adult education program may receive an adult high school diploma by completing all state and district diploma requirements and passing all subtests of the UBSCT or may receive an adult alternative completion diploma consistent with district and state requirements.

(8) Specific testing dates shall be calendared and published at least two years in advance by the Board.

D. Reciprocity and new seniors:

(1) Students who transfer from out of state to a Utah high school after the tenth grade year may be granted reciprocity for high school graduation exams taken and passed in other states or countries based on criteria set by the Board and applied by the local board.

(2) Students for whom reciprocity is not granted and students from other states or countries that do not have high school graduation exams shall be required to pass the UBSCT before receiving a basic high school diploma if they enter the system before the final administration of the test in the student's senior year.

(3) The Board shall also establish criteria for granting a diploma to students who enter a Utah high school after the final administration of the test in their senior year.

(4) Students may appeal to the local board for exceptions.

E. Testing eligibility:

(1) Building principals shall certify that all students taking the test in any administration are qualified to be there.

(2) Students are qualified if they:

(a) are enrolled in tenth grade, eleventh, or twelfth grade (or equivalent designation in adult education) in a Utah public school program; or

(b) are enrolled in a Utah private/parochial school (with documentation) and are least 15 years old or enrolled at the appropriate grade level; or

(c) are home schooled (with documentation) and are at least 15 years old; and

(3) Students eligible for accommodations, assistive devices, or other special conditions during testing shall submit appropriate documentation at the test site.

F. Testing procedures:

(1) Three subtests make up the UBSCT: reading, writing, and mathematics. Each subtest shall be given on a separate day.

(2) The same subtest shall be given to all students on the same day, as established by the Board.

(3) All sections of a subtest shall be completed in a single day.

(4) Subtests are not timed. Students ~~should~~ shall be given the time necessary within the designated test day to attempt to answer every question on each section of the subtest.

(5) Make-up testing shall not be offered. Students who miss the opportunity to take a subtest on the day it is offered may arrange to take that subtest the next time it is given.

(6) Arrangements for extraordinary circumstances or exceptions shall be reviewed and decided by the UBSCT Advisory Committee on a case-by-case basis consistent with the purposes of this rule and enabling legislation.

R277-705-7. Security and Accountability.

A. Building principals shall be responsible to secure and return completed tests consistent with Utah State Office of Education timelines.

B. School district testing directors shall account for all materials used, unused and returned.

C. Results shall be returned to students and parents/guardians no later than eight weeks following the administration of the test.

D. Appeals for failure to pass the UBSCT due to extraordinary circumstances:

(1) If a student or parent believes that a testing irregularity or inaccuracy in scoring prevented a student from passing the UBSCT, the student or parent may appeal to the local board within 60 days of receipt of the test results.

(2) The local board shall consider the appeal and render a decision in a timely manner.

(3) The parent or student may appeal the local board's decision to the Board, under rules adopted by the Board.

R277-705-8. Student Rights and Responsibilities Related to Graduation, Transcripts and Receipt of Diplomas.

A. School districts shall supervise the granting of credit and awarding of diplomas, but may delegate the responsibility to schools within the district.

B. A school district or school may determine criteria for a student's participation in graduation activities and exercises, independent of a student's receipt of a diploma.

C. Diplomas or certificates, credit or unofficial transcripts may not be withheld from students for nonpayment of school fees.

D. School districts or schools shall establish consistent timelines for all students for completion of graduation requirements.

KEY: curricula

~~[March 5, 2002~~

Art X Sec 3

53A-1-402(1)(b)

53A-1-603 through 53A-1-611

53A-1-401(3)



Environmental Quality, Water Quality
R317-4-3
Onsite Wastewater Systems General
Requirements

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 25203
 FILED: 08/29/2002, 15:43

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In August 2001, the Water Quality Board adopted Rule R317-11, "Certification Required to Design, Inspect and Maintain Underground Wastewater Disposal Systems, or Conduct Percolation and Soil Tests for Underground Wastewater Disposal Systems". As a result of that rule, R317-4 was amended to include a requirement at Subsection R317-4-3.4(A) that the wastewater system designer must certify in writing that the system was installed in accordance with the approved plans and specifications. Since enactment of this amendment, the Division of Water Quality has determined, through public comment and discussion with local health department staff, the certification requirement to be overly burdensome to individual homeowners. The certification requirement was discussed with the Onsite Program Advisory Committee of local health departments on July 18, 2002. It was determined that local health department staff routinely inspect onsite system installation before backfilling of trenches. The committee recommended removing the certification requirement.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment would remove language at Subsection R317-4-3.4(A) requiring that the wastewater system designer must certify in writing that the system was installed in accordance with approved plans and specifications.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-5-104

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The proposed amendment does not affect state budget or staff resources.
- ❖ LOCAL GOVERNMENTS: No cost or savings are anticipated for local government. The proposed amendment would not affect the current procedures used by local health departments to inspect installation of wastewater disposal systems.
- ❖ OTHER PERSONS: A savings of \$150 to \$500 per homeowner applicant would be realized by removing the certification requirement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs are anticipated as a result of the proposed amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The current rule requires the wastewater system designer to certify in writing that the system was installed in accordance with the approved plans

and specifications. The fee for this service is estimated at \$150 - \$500 per certification. The proposed amendment would remove the requirement for this service.

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

ENVIRONMENTAL QUALITY
 WATER QUALITY
 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:

Dave Wham at the above address, by phone at 801-538-6052, by FAX at 801-538-6016, or by Internet E-mail at dwham@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 10/15/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/23/2002

AUTHORIZED BY: Don Ostler, Director

R317. Environmental Quality, Water Quality.
R317-4. Onsite Wastewater Systems.
R317-4-3. Onsite Wastewater Systems General Requirements.

3.1. Units Required in an Onsite Wastewater System. The onsite wastewater system shall consist of the following components:

A. A building sewer.

B. A septic tank.

C. An absorption system. This may be a standard trench, a shallow trench with capping fill, a chambered trench, a deep wall trench, a seepage pit or pits, an absorption bed, or alternative or experimental systems as specified in this rule, depending on location, topography, soil conditions and ground water table.

3.2. Multiple Dwelling Units. Multiple dwelling units under individual ownership, except condominiums, shall not be served by a single onsite wastewater system except where that system is under the sponsorship of a body politic. Plans and specifications for such systems shall be submitted to and approved by the Utah Water Quality Board. Issuance of a construction permit by the Board shall constitute approval of plans and authorization for construction.

3.3. Review Criteria for Establishing Onsite Wastewater System Feasibility of Proposed Housing Subdivisions and Other Similar Developments. The local health department will review plans for proposed subdivisions and other similar developments for wastewater permit feasibility, prepared at the owner's expense by or under the supervision of a qualified person such as, a licensed environmental health scientist, or a registered civil, environmental or geotechnical engineer, certified by the regulatory authority. A plan of the subdivision shall be submitted to the local health department for review and shall be drawn to such scale as needed to show essential features. Ground surface contours must be included, preferably at two-foot intervals unless smaller intervals are necessary to describe existing surface conditions. Intervals larger than two feet may be authorized on a case-by-case basis where it can

be shown that they are adequate to describe all necessary terrain features. The plan must be specifically located with respect to the public land survey of Utah. A vicinity location map, preferably a U.S. Geological Survey 7-1/2 or 15 minute topographic map, shall be provided with the plan for ease in locating the subdivision area. A narrative feasibility report addressing the short-range and long-range water supply and wastewater system facilities proposed to serve the development must be submitted for review. The feasibility report shall include the following information:

- A. Name and location of proposed development.
- B. Name and address of the developer of the proposed project and the engineer or individual who submitted the feasibility report.
- C. Statement of intended use of proposed development, such as residential-single family, multiple dwellings, commercial, industrial, or agricultural.
- D. The proposed street and lot layout, the size and dimensions of each lot and the location of all water lines and easements, and if possible, the areas proposed for sewage disposal. All lots shall be consecutively numbered. The minimum required area of each lot shall be sufficient to permit the safe and effective use of an onsite wastewater system and shall include a replacement area for the absorption system. Plans used for multiple dwellings, commercial, and industrial purposes will require a study of anticipated sewage flows prior to developing suitable area requirements for sewage disposal.
- E. Ground surface slope of areas proposed for onsite wastewater systems shall conform with the requirements of R317-4-4.
- F. The location, type, and depth of all existing and proposed nonpublic water supply sources within 200 feet of onsite wastewater systems, and of all existing or proposed public water supply sources within 1500 feet of onsite wastewater systems.
- G. The locations of all rivers, streams, creeks, washes (dry or ephemeral), lakes, canals, marshes, subsurface drains, natural storm water drains, lagoons, artificial impoundments, either existing or proposed, within or adjacent to the area to be planned, and cutting or filling of lots that will affect building sites. Areas proposed for onsite wastewater systems shall be isolated from pertinent ground features as specified in Table 2.
- H. Surface drainage systems shall be included on the plan, as naturally occurring, and as altered by roadways or any drainage, grading or improvement, installed or proposed by the developer. The details of the surface drainage system shall show that the surface drainage structures, whether ditches, pipes, or culverts, will be adequate to handle all surface drainage so that it in no way will affect onsite wastewater systems on the property. Details shall also be provided for the final disposal of surface runoff from the property.
- I. If any part of a subdivision lies within or abuts a flood plain area, the flood plain shall be shown within a contour line and shall be clearly labeled on the plan with the words "flood plain area".
- J. The location of all soil exploration pits and percolation test holes shall be clearly identified on the subdivision final plat and identified by a key number or letter designation. The results of such soil tests, including stratified depths of soils and final percolation rates for each lot shall be recorded on or with the final plat. All soil tests shall be conducted at the owner's expense.
- K. A report by an engineer, geologist, or other person qualified by training and experience to prepare such reports must be submitted to show a comprehensive log of soil conditions for each lot proposed for an onsite wastewater system.

1. A sufficient number of soil exploration pits shall be dug on the property to provide an accurate description of subsurface soil conditions. Soil description shall conform with the United States Department of Agriculture soil classification system. Soil exploration pits shall be of sufficient size to permit visual inspection, and to a minimum depth of ten feet, and at least four feet below the bottom of proposed absorption systems. One end of each pit should be sloped gently to permit easy entry if necessary. Deeper soil exploration pits are required if deep absorption systems, such as deep wall trenches or seepage pits, are proposed.

2. For each soil exploration pit, a log of the subsurface formations encountered must be submitted for review which describes the texture, structure, and depth of each soil type, the depth of the ground water table if encountered, and any indications of the maximum ground water table.

3. Soil exploration pits and percolation tests shall be made at the rate of at least one test per lot. The local health department may allow fewer tests based on the uniformity of prevailing soil and ground water characteristics and available percolation test data. Percolation tests shall be conducted in accordance with R317-4-5. If soil conditions and surface topography indicate, a greater number of soil exploration pits or percolation tests may be required by the regulatory authority. Whenever available, information from published soil studies of the area of the proposed subdivision shall be submitted for review. Soil exploration pits and percolation tests must be conducted as closely as possible to the absorption system sites on the lots or parcels. The regulatory authority shall have the option of inspecting the open soil exploration pits and monitoring the percolation test procedure. Complete results shall be submitted for review, including all unacceptable test results. Absorption systems are not permitted in areas where the requirements of R317-4-5 cannot be met or where the percolation rate is slower than 60 minutes per inch or faster than one minute per inch. Where soil and other site conditions are clearly unsuitable, there is no need for conducting soil exploration pits or percolation tests.

- L. A statement by an engineer, geologist, or other person qualified by training and experience to prepare such statements, must be submitted indicating the present and maximum ground water table throughout the development. If there is evidence that the ground water table ever rises to less than two feet from the bottom of the proposed absorption systems, onsite wastewater absorption systems will not be approved. Ground water table determinations must be made in accordance with R317-4-5.

- M. If ground surface slopes exceed four percent, or if soil conditions, drainage channels, ditches, ponds or watercourses are located in or near the project so as to complicate design and location of an onsite wastewater systems, a detailed system layout shall be provided for those lots presenting the greatest design difficulty. A typical lot layout will include, but not be limited to the following information, and shall be drawn to scale:

1. All critical dimensions and distances for the selected lot(s), including the distance of the onsite wastewater system from lakes, ponds, watercourses, etc.
2. Location of dwelling, with distances from street and property lines.
3. Location of water lines, water supply, onsite wastewater system, property lines, and lot easements.
4. Capacity of septic tank and dimensions and cross-section of absorption system.
5. Results and locations of individual soil exploration pits and percolation tests conducted on the selected lot(s).

6. If nonpublic wells or springs are to be provided, the plan shall show a typical lot layout indicating the relative location of the building, well or spring, and onsite wastewater system.

N. If proposed developments are located in aquifer recharge areas or areas of other particular geologic concern, the regulatory authority may require such additional information relative to ground water movement, or possible subsurface sewage flow.

O. Excessively Permeable Soil and Blow Sand. Soil having excessively high permeability, such as cobbles or gravels with little fines and large voids, affords little filtering action to effluents flowing through it and may constitute grounds for rejection of sites. The extremely fine-grained "blow sand" (aeolian sand) found in some parts of Utah is unsuitable for absorption systems, and onsite wastewater system for installation in such blow sand conditions shall not be approved. This shall not apply to lots which have received final local health department approval prior to the effective date of this rule.

1. Percolation test results in blow sand will generally be rapid, but experience has shown that this soil has a tendency to become sealed with minute organic particles within a short period of time. For lots which are exempt as described above, systems may be constructed in such material provided it is found to be within the required range of percolation rates specified in these rules, and provided further that the required area shall be calculated on the assumption of the minimum acceptable percolation rate (60 minutes per inch for standard trenches, deep wall trenches, and seepage pits, and 30 minutes per inch for absorption beds).

2. Prohibition of Onsite Wastewater Systems. If soil studies described in the foregoing paragraphs indicate conditions which fail in any way to meet the requirements specified herein, the use of onsite wastewater systems in the area of study will be prohibited.

P. After review of all information, plans, and proposals, the regulatory authority will send a letter to the individual who submitted the feasibility report stating the results of the review or the need for additional information. An affirmative statement of feasibility does not imply that it will be possible to install onsite wastewater systems on all of the proposed lots, but shall mean that such onsite wastewater systems may be installed on the majority of the proposed lots in accordance with minimum State requirements and any conditions that may be imposed.

3.4. Submission, Review, and Approval of Plans for Onsite Wastewater Systems.

A. Plans and specifications for the construction, alteration, extension, or change of use of onsite wastewater systems which receive domestic wastewater, prepared at the owner's expense by or under the supervision of a qualified person such as, a licensed environmental health scientist, or a registered civil, environmental or geotechnical engineer, certified by the regulatory authority, shall be submitted to, and approved by the local health department having jurisdiction before construction of either the onsite wastewater system or building to be served by the onsite wastewater system may begin. Details for said site, plans, and specifications are listed in R317-4-4. After January 1, 2002, the design must be prepared in accordance with certification requirements in R317-11~~], and the system designer must, following construction of the system, certify in writing that the system was installed in accordance with the approved plans and specifications].~~

B. Plans and specifications for the construction, alteration, extension, or change of use of onsite wastewater systems which receive nondomestic wastewater shall be submitted to and approved by the Division of Water Quality.

C. The local health department having jurisdiction, or the Division, shall review said plans and specifications as to their adequacy of design for the intended purpose, and shall, if necessary, require such changes as are required by these rules. When the reviewing regulatory authority is satisfied that plans and specifications are adequate for the conditions under which a system is to be installed and used, written approval shall be issued to the individual making the submittal and the plans shall be stamped indicating approval. Construction shall not commence until the plans have been approved by the regulatory authority. The installer shall not deviate from the approved design without the approval of the reviewing regulatory authority.

D. Depending on the individual site and circumstances, or as determined by the local board of health some or all of the following information may be required. Compliance with these rules must be determined by an on-site inspection after construction but before backfilling. Onsite wastewater systems must be constructed and installed in accordance with these rules.

E. In order that approval can be expedited, plans submitted for review must be drawn to scale (1" = 8', 16', etc. but not exceed 1" = 30'), or dimensions indicated. Plans must be prepared in such a manner that the contractor can read and follow them in order to install the system properly. Plan information that may be required is as follows:

1. Plot or property plan showing:
 - a. Date of application.
 - b. Direction of north.
 - c. Lot size and dimensions.
 - d. Legal description of property if available.
 - e. Ground surface contours (preferably at two-foot intervals) of both the original and final (proposed) grades of the property, or relative elevations using an established bench mark.
 - f. Location and dimensions of paved and unpaved driveways, roadways and parking areas.
 - g. Location and explanation of type of dwelling to be served by an onsite wastewater system.
 - h. Maximum number of bedrooms (including statement of whether a finished or unfinished basement will be provided), or if other than a single family dwelling, the number of occupants expected and the estimated gallons of wastewater generated per day.
 - i. Location and dimensions of the essential components of the onsite wastewater system.
 - j. Location of soil exploration pit(s) and percolation test holes.
 - k. Location of building sewer and water service line to serve dwelling.

1. The location, type, and depth of all existing and proposed nonpublic water supply sources within 200 feet of onsite wastewater systems, and of all existing or proposed public water supply sources within 1500 feet of onsite wastewater systems.

- m. Distance to nearest public water main and size of main.
- n. Distance to nearest public sewer, size of sewer, and whether accessible by gravity.
- o. Location of easements or drainage right-of-ways affecting the property.

p. Location of all streams, ditches, watercourses, ponds, subsurface drains, etc., (whether intermittent or year-round) within 100 feet of proposed onsite wastewater system.

2. Statement of soil conditions obtained from soil exploration pit(s) dug (preferably by backhoe) to a depth of ten feet in the absorption system area, or to the ground water table if it is shallower than 10 feet below ground surface. In the event that absorption

system excavations will be deeper than six feet, soil exploration pits must extend to a depth of at least four feet below the bottom of the proposed absorption system excavation. One end of each pit should be sloped gently to permit easy entry if necessary. Whenever possible data from published soil studies of the site should also be submitted. Soil logs should be prepared in accordance with the United States Department of Agriculture soil classification system.

3. Statement with supporting evidence indicating (A) present and (B) maximum anticipated ground water table and (C) flooding potential for onsite wastewater system site.

4. The results of at least one stabilized percolation test for the design flow less than 2,000 gallons per day, or three tests if the design flow is more than 2,000 gallons per day, but less than 5,000 gallons per day, in the area of the proposed absorption system, conducted according to R317-4-5. Percolation tests should be conducted at a depth of six inches below the bottom of the proposed absorption system excavation and test results should be submitted on a "Percolation Test Certificate" obtainable upon request. If a deep wall trench or seepage pit is proposed, a completed "Deep Wall Trench Construction Certificate" may be submitted if percolation tests are not required.

5. Relative elevations (using an established bench mark) of the:

- a. Building drain outlet.
- b. The inlet and outlet inverts of the septic tank(s).
- c. The outlet invert of the distribution box (if provided) and the ends or corners of each distribution pipe lateral in the absorption system.
- d. The final ground surface over the absorption system.
- e. Septic tank access cover, including length of extension, if used.

6. Schedule or grade, material, diameter, and minimum slope of building sewer.

7. Septic tank capacity, design (cross sections, etc.), materials, and dimensions. If tank is commercially manufactured, state name and address of manufacturer.

8. Details of drop boxes or distribution boxes (if provided)

9. Absorption system details which include the following:

- a. Schedule or grade, material, and diameter of distribution pipes.
- b. Required and proposed area for absorption system.
- c. Length, slope, and spacing of each distribution pipeline.
- d. Maximum slope across ground surface of absorption system area.

e. Slope of distribution pipelines (maximum slope four inches/100 feet., level preferred)

f. Distance of distribution pipes from trees, cut banks, fills or other subsurface disposal systems.

g. Type and size of filter material to be used (must be clean, free from fines, etc.).

h. Cross section of absorption system showing:

- i. Depth and width of absorption system excavation.
- ii. Depth of distribution pipe.
- iii. Depth of filter material.
- iv. Barrier (i.e., synthetic filter fabric, straw, etc.) used to separate filter material from backfill.
- v. Depth of backfill.

10. Schedule or grade, type, and capacity of sewage pump, pump well, discharge line, siphons, siphon chambers, etc., if required as part of the onsite wastewater system.

11. Statement indicating (A) source of water supply for dwelling (whether a well, spring, or public system) and (B) location

and (C) distance from onsite wastewater disposal system. If plan approval of a nonpublic water supply system is desired, information regarding that system must be submitted separately.

12. Complete address of dwelling to be served by this onsite wastewater system. Also the name, current address, and telephone number of:

a. The person who will own the proposed onsite wastewater system.

b. The person who will construct and install the onsite wastewater system.

c. If mortgage loan for dwelling is insured or guaranteed by a federal agency, the name and local address of that agency.

F. All applicants requesting plan approval for an onsite wastewater system must submit a sufficient number of copies of the above required information to enable the regulatory authority to retain one copy as a permanent record.

G. Applications will be rejected if proper information is not submitted.

3.5. Final On-Site Inspection.

A. After an onsite wastewater system has been installed and before it is backfilled or used, the entire system shall be inspected by the appropriate regulatory authority to determine compliance with these rules. For deep wall trenches and seepage pits, the regulatory authority should make at least two inspections, with the first inspection being made following the excavation and the second inspection after the trench or pit has been filled with stone or constructed, but before any backfilling has occurred.

B. Each septic tank shall be tested for water tightness before backfilling in accordance with the requirements and procedure outlined in the American Society for Testing Materials' Standard ASTM C-1227, or concrete tanks should be filled 24 hours before the inspection to allow stabilization of the water level. During the inspection there shall be no change in the water level for 30 minutes. Nor shall moving water, into or out of the tank, be visible. The regulatory authority may allow two piece tanks, with the joint below the water level, to be backfilled up to three inches below the joint to provide adequate support to the seam of the tank. Testing shall be supervised by the regulatory authority. Tanks exhibiting obvious defects or leaks shall not be approved unless such deficiencies are repaired to the satisfaction of the regulatory authority.

3.6. Appeals. The appeals process for this rule is outlined in R317-1-8.

KEY: waste water, onsite wastewater systems, alternative onsite wastewater systems, septic tanks

~~August 28, 2001~~ 2002
19-5-104



Governor, Planning and Budget, Chief
Information Officer

R365-3

Computer Software Licensing,
Copyright, Control, Retention, and
Transfer

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
DAR FILE No.: 25187
FILED: 08/20/2002, 14:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Repeals existing rule and reenacts the rule with modifications described in the summary.

SUMMARY OF THE RULE OR CHANGE: This proposed rulemaking creates a software controller function at the agency and enterprise level, and clearly defines the responsibilities of this function; see specifically Subsection R356-3-5(3) and (4). The rulemaking also provides a definition of "spot audit"; see Subsection R365-3-4(5). Also, minor changes of wording and clarifications have been added. In other respects, the substantive provisions of the repealed and reenacted rules remain the same.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63D-1-301.5 and 63-46a-3

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: No impact since responsibilities are to be assumed by existing agency and enterprise level staff.
- ❖ LOCAL GOVERNMENTS: No impact on local government, as the rule applies only to executive branch agencies.
- ❖ OTHER PERSONS: No impact; the rule doesn't apply beyond entities of the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No impact; the rule doesn't apply beyond entities of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: If a business needed to enforce its licensing agreements through court action, this could be costly. This rule is preventative in nature because it provides for internal monitoring.

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

GOVERNOR
PLANNING AND BUDGET,
CHIEF INFORMATION OFFICER
Room 116 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:

Al Sherwood at the above address, by phone at 801-538-1195, by FAX at 801-538-1547, or by Internet E-mail at asherwood@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 10/15/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2002

AUTHORIZED BY: Phillip Windley, Chief Information Officer

R365. Governor, Planning and Budget, Chief Information Officer.**R365-3. Computer Software Licensing, Copyright, Control, Retention, and Transfer.****[R365-3-1. Purpose.**

~~The purpose of this rule is to establish the State of Utah's position and its intent to:~~

- ~~(1) comply with computer software licensing agreements and applicable federal laws, including copyright and patent laws;~~
- ~~(2) define the methods by which the State of Utah (State) will control and protect computer software; and~~
- ~~(3) establish the State's right, title and interest in state-developed computer software, including the sale and transfer of such software under certain conditions.~~

R365-3-2. Application.

~~All state agencies of the executive branch of the State government shall comply with this rule, which applies to the use, acquisition and transfer of all computer software, regardless of the operating environment or source of the software.~~

R365-3-3. Authority.

~~This rule is issued by the Chief Information Officer under the authority of Section 63D-1-301.5 of the Information Technology Act, and in accordance with Section 63-46a-3 of the Utah Rulemaking Act, Utah Code Annotated.~~

R365-3-4. Definitions.

~~As used in this rule:~~

- ~~(1) "Audit" means to review compliance with laws, rules and policies that apply to computer software and related documentation; and to report findings and conclusions.~~
- ~~(2) "Commercial computer software" means computer software that is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices.~~
- ~~(3) "Computer program" means a set of statements or instructions used in an information processing system to provide storage, retrieval, and manipulation of data from the computer system and any associated documentation and source material that explain how to operate the program.~~
- ~~(4) "Computer software" means sets of instructions or programs structured in a manner designed to cause a computer to carry out a desired result.~~
- ~~(5) "State agency" means any agency or administrative sub-unit of the executive branch of the State government except:~~
 - ~~(a) the State Board of Education; and~~
 - ~~(b) the Board of Regents and institutions of higher education.~~

~~— (6) "State developed computer software" means computer software and related documentation developed under contract with the State or by State employees under the conditions set forth in the Employment Inventions Act, Section 34-39-1 et seq., Utah Code Annotated.~~

~~**R365-3-5. Compliance and Responsibilities: Software Licensing.**~~

~~— (1) Each state agency and its employees shall comply with computer software licensing agreements, state laws, federal contracts, federal funding agreements, and federal laws, including copyright and patent laws.~~

~~— (2) Each state agency shall adopt the following practices with respect to computer software:~~

~~— (a) Keep and maintain an inventory of all state owned computer software and software licensing agreements.~~

~~— (b) Ensure that all data and computer software is removed from the storage media of any computer device before disposing of or transferring the equipment, unless the computer software and related documentation are included as part of the transfer.~~

~~— (c) Understand the conditions of computer software licensing agreements before purchasing computer software, and inform State employees, whose responsibility it is to monitor the State's compliance with computer software licensing agreements, of these conditions.~~

~~— (d) Inform employees that are engaged in developing or controlling the distribution of software for the State, that any state-developed software is an asset owned by the State and controlled according to the terms of this rule.~~

~~**R365-3-6. Compliance and Responsibilities: Retention and Transfer of State-Developed Computer Software.**~~

~~— (1) Unless otherwise prohibited by federal law, regulation, contract or funding agreement, a state agency may retain the right, title and interest in any state developed computer software. To do so, the agency shall:~~

~~— (a) clearly define in all contracts that it controls the ownership rights for computer software development and related documentation; and~~

~~— (b) mark all computer software and related documentation developed by employees of the State with the copyright symbol and year, and label "Utah State Government" on all media on which the computer software or documentation is stored and at the beginning of the computer software execution.~~

~~— (2) A state agency may sell or otherwise transfer the right, title and interest in any state developed computer software. In order to carry this out, the agency must do the following:~~

~~— (a) Submit a request to and obtain approval from the Chief Information Officer prior to the sale or transfer of state developed computer software. The agency's request shall include a copy of the transfer agreement and any other contractual information. A summary report of these requests will be provided to the Information Technology Policy and Strategy Committee. An example of a model~~

~~transfer or sale of state developed software agreement may be obtained from the Chief Information Officer.~~

~~— (b) Clearly specify within the transfer documents whether the costs of development will be recovered from the receiver.~~

~~— (c) Clearly specify within the transfer documents whether the costs associated with copying and sending the state developed computer software will be recovered from the receiver.~~

~~— (d) Clearly specify within the transfer documents that the receiver is responsible for acquiring any commercial computer software upon which the state developed computer software may be dependent.~~

~~— (e) Clearly specify within the transfer documents that no additional services, such as installation, training, or maintenance, will be provided unless the parties have agreed otherwise.~~

~~— (f) Clearly specify within the transfer documents that the state-developed computer software is being transferred in "as-is" condition, and that the State will not be held liable for any incidental or consequential damages under any circumstances.~~

~~— (g) Retain a record of the transfer, and process it in accordance with the Government Records Access and Management Act, Section 63-2-101 et seq., Utah Code Annotated.~~

~~— (3) A state agency may initiate an agreement to transfer state-developed computer software when reasons exist to share such software with another state or entity.~~

~~— (4) The Chief Information Officer may measure compliance of a state agency and its employees with this rule by conducting periodic audits in accordance with Section 63D-1-301.5, Utah Code Annotated. In performing audits, the Chief Information Officer may utilize external auditors and an agency's internal auditor(s) when such resources are available and the use of such resources is appropriate.~~

~~— (5) A State employee who does not comply with this rule may be subject to disciplinary action, including dismissal, by the appropriate agency supervisor in accordance with Department of Human Resource Management Rule R477-11-1 et seq., Utah Administrative Code.~~

**KEY: computer software, licensing, copyright, transfer
December 21, 2001**

63D-1-301.5

63-46a-3

34-39-1 et seq.

63-2-101 et seq.]

R365-3-1. Purpose.

The purpose of this rule is to establish the State of Utah's position and its intent to:

— (1) comply with computer software licensing agreements and applicable federal laws, including copyright and patent laws;

— (2) define the methods by which the State of Utah (State) will control and protect computer software; and

— (3) establish the State's right, title and interest in state-developed computer software, including the sale and transfer of such software under certain conditions.

R365-3-2. Application.

All state agencies of the executive branch of the State government shall comply with this rule, which applies to the use, acquisition and transfer of all computer software, regardless of the operating environment or source of the software.

R365-3-3. Authority.

This rule is issued by the Chief Information Officer under the authority of Section 63D-1-301.5 of the Information Technology Act, and in accordance with Section 63-46a-3 of the Utah Rulemaking Act, Utah Code Annotated.

R365-3-4. Definitions.

As used in this rule:

(1) "Audit" means to review compliance with laws, rules and policies that apply to computer software and related documentation; and to report findings and conclusions.

(2) "Commercial computer software" means computer software that is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices.

(3) "Computer program" means a set of statements or instructions used in an information processing system to provide storage, retrieval, and manipulation of data from the computer system and any associated documentation and source material that explain how to operate the program.

(4) "Computer software" means sets of instructions or programs structured in a manner designed to cause a computer to carry out a desired result.

(5) "Spot Audit" means a periodic audit described in (1) and conducted by a person or persons performing the State Software Controller function.

(6) "State agency" means any agency or administrative subunit of the executive branch of the State government except:

(a) the State Board of Education; and

(b) the Board of Regents and institutions of higher education.

(7) "State-developed computer software" means computer software and related documentation developed under contract with the State or by State employees under the conditions set forth in the Employment Inventions Act, Section 34-39-1 et seq., Utah Code Annotated.

R365-3-5. Compliance and Responsibilities: Software Licensing.

(1) Each state agency and its employees shall comply with computer software licensing agreements, state laws, federal contracts, federal funding agreements, and federal laws, including copyright and patent laws.

(2) All management personnel will discourage software piracy and take appropriate personnel action against any employee that violates software license agreements.

(3) Each state agency shall:

(a) establish a software controller function that has the responsibility and authority to manage software licenses, software licensing agreements, software inventory, and the oversight of and reporting on spot audits;

(b) coordinate training to employees who are assigned, as part of their job responsibilities, the software controller function.

(c) provide training to other employees appropriate to their responsibilities including those who install, transfer and dispose of software.

(d) Provide to employees notices of the state agency's software use policy at appropriate locations. Appropriate locations may include computing facilities, offices, lunchrooms or websites.

(e) Keep and maintain an inventory of all state-owned computer software and software licensing agreements by:

(i) Establishing accurate software inventories and maintaining them;

(ii) Establishing a baseline inventory of software already purchased;

(iii) Maintaining this inventory through annual inventory reviews that reconcile purchases against inventory;

(iv) Acquiring and using auditing tools to assist in establishing the inventory baseline and performing the ongoing reconciliation.

(f) Dispose of software in accordance with the software license agreement.

(g) Remove from the storage media before disposing of a computer, all private, protected or controlled data as defined by the Government Records Access and Management Act, UCA 63-2-101 et seq.

(h) Understand the conditions of computer software licensing agreements before purchasing computer software, and inform State employees, whose responsibility it is to monitor the State's compliance with computer software licensing agreements, of these conditions.

(i) Inform employees that are engaged in developing or controlling the distribution of software for the State, that any state-developed software is an asset owned by the State and controlled according to the terms of this rule.

(4) A state software controller function is established within the Division of Information Technology Services with the following responsibilities:

(a) coordinate all centralized software purchases;

(b) manage software licenses, software licensing agreements and software inventory for centralized software purchases;

(c) coordinate and provide information to employees who are responsible for the software controller function within each state agency;

(d) coordinate statewide audits or spot audits as needed. In determining when to conduct a spot audit personnel performing this function will take into consideration factors including but not limited to:

(i) an unusual organizational activity such as high employee turnover;

(ii) large development projects or recent large scale software conversions.

R365-3-6. Compliance and Responsibilities: Retention and Transfer of State-Developed and owned Computer Software.

(1) Unless otherwise prohibited by federal law, regulation, contract or funding agreement, a state agency may retain the right, title and interest in any state-developed computer software. To do so, the agency shall:

(a) clearly define in all contracts that it controls the ownership rights for computer software development and related documentation; and

(b) mark all computer software and related documentation developed by employees of the State with the copyright symbol and year, and label "Utah State Government" on all media on which the computer software or documentation is stored and at the beginning of the computer software execution.

(2) A state agency may sell or otherwise transfer the right, title and interest in any state-developed and owned computer software. In order to carry this out, the agency must do the following:

(a) Submit a request to and obtain approval from the Chief Information Officer prior to the sale or transfer of state-developed computer software. The agency's request shall include a copy of the transfer agreement and any other contractual information. A summary report of these requests will be provided to the Information Technology Policy and Strategy Committee. An example of a model transfer or sale of state-developed software agreement may be obtained from the Chief Information Officer.

(b) Clearly specify within the transfer documents whether the costs of development will be recovered from the receiver.

(c) Clearly specify within the transfer documents whether the costs associated with copying and sending the state-developed computer software will be recovered from the receiver.

(d) Clearly specify within the transfer documents that the receiver is responsible for acquiring any commercial computer software upon which the state-developed computer software may be dependent.

(e) Clearly specify within the transfer documents that no additional services, such as installation, training, or maintenance, will be provided unless the parties have agreed otherwise.

(f) Clearly specify within the transfer documents that the state-developed computer software is being transferred in "as is" condition, and that the State will not be held liable for any incidental or consequential damages under any circumstances.

(g) Retain a record of the transfer, and process it in accordance with the Government Records Access and Management Act, Section 63-2-101 et seq., Utah Code Annotated.

(3) A state agency may initiate an agreement to transfer state-developed computer software when reasons exist to share such software with another state or entity.

(4) The Chief Information Officer may measure compliance of a state agency and its employees with this rule by conducting periodic audits in accordance with Section 63D-1-301.5, Utah Code Annotated. In performing audits, the Chief Information Officer may utilize external auditors and an agency's internal auditor(s) when such resources are available and the use of such resources is appropriate.

(5) A State employee who does not comply with this rule may be subject to disciplinary action, including dismissal, by the appropriate agency supervisor in accordance with Department of Human Resource Management Rule R477-11-1 et seq., Utah Administrative Code.

KEY: computer software, licensing, copyright, transfer
2002
63D-1-301.5
63-46a-3



Governor, Planning and Budget, Chief
Information Officer
R365-4
Information Technology Protection

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE No.: 25186

FILED: 08/20/2002, 11:41

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is vague and difficult to test whether or not agencies are in compliance. Some of the language in the original rule has been included under Rules R365-3 and R365-5. The Information Technology Policy and Strategy Committee (ITPSC) has recently passed a security charter and policy that covers the remaining areas partially addressed through this rule. It is the intent to submit a security policy to rulemaking in the future.

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

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63, Chapter 46a

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: No anticipated cost savings. There are no anticipated incremental costs or savings as the provisions of this rule are found in other rules and in ITPSC policy.
- ❖ LOCAL GOVERNMENTS: This rule only is directed to executive branch agencies not local government.
- ❖ OTHER PERSONS: No impact. There are no anticipated incremental costs or savings as the provisions of this rule are found in other rules and in ITPSC policy.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There are no anticipated incremental costs or savings as the provisions of this rule are found in other rules and in ITPSC policy.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No impact to businesses.

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

GOVERNOR
PLANNING AND BUDGET,
CHIEF INFORMATION OFFICER
Room 116 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:

Al Sherwood at the above address, by phone at 801-538-1195, by FAX at 801-538-1547, or by Internet E-mail at asherwood@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 10/15/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2002

AUTHORIZED BY: Phillip Windley, Chief Information Officer

R365. Governor, Planning and Budget, Chief Information Officer.

~~R365-4. Information Technology Protection.~~

~~R365-4-1. Purpose.~~

~~The purpose of this rule is to set forth the responsibilities for protecting the state's information technology resources from:~~

- ~~(1) accidental or intentional (but unauthorized) acts, such as disclosure, modification, destruction, theft, etc.; and~~
- ~~(2) natural hazards, such as fire, lightning, rain, earthquake, etc.~~

~~R365-4-2. Application.~~

~~This rule applies to all state agencies of the executive branch of government, including employees, contractors, volunteers, and customers who require access to any information technology resource which is owned, leased, or contracted by a state agency.~~

~~R365-4-3. Authority.~~

~~This rule is issued by the chief information officer, pursuant to the Information Technology Act, Section 63D-1-301, and according to the Utah Rulemaking Act, Section 63-46a-3.~~

~~R365-4-4. Definitions.~~

~~(1) "Acceptable Use" means lawful access to or use of a state-provided information technology resource, authorized by a state agency, and consistent with laws and rules prescribed in Subsections (4), (12), and (13);~~

~~(2) "Access" means an interaction between a subject and an object that allows information to flow from one to the other, and the ability to enter a secured building area.~~

~~(3) "Audit" means review of compliance with laws, rules, and policy applicable to information technology protection, review of performance, and reporting findings and conclusions.~~

~~(4) "Federal laws affecting information technology protection" means the Computer Fraud and Abuse Act of 1986 (18 United States Code 1030), Computer Security Act of 1987 (40 United States Code 759), Computer Software Rental Amendments Act of 1990 (17 United States Code 101), Copyrights (17 United States Code), Counterfeit Access Device and Computer Fraud and Abuse Act of 1984 (18 United States Code 1030), Electronic Communications Privacy Act of 1986 (18 United States Code 1367), Freedom of Information Act (5 United States Code 552), and Privacy Act of 1974 (5 United States Code 552a).~~

~~(5) "State-provided information technology resource" means computer software, computer data bases, electronic messaging and distribution systems, intranets, the Internet, computer hardware and telecommunications equipment; and any information which is considered by a state agency as sensitive or costly to reconstruct and is generated by, transmitted within, or stored on any media.~~

~~(6) "Information technology protection" means the methods available to protect an information technology resource from unauthorized use, modification, damage, or loss, including policies, standards, technological safeguards, and managerial procedures that can be applied to computer hardware, software, data, and facilities to ensure the availability, integrity, and confidentiality of an information technology resource.~~

~~(7) "Information technology service center" means a designated function within a state agency which provides, administers, and maintains an information technology resource for use by its customers.~~

~~(8) "Protect" means to implement information technology protection consistent with the value and the classification (Refer to Government Records Access and Management Act, Section 63-2-101 et seq.) of the information technology resource.~~

~~(9) "Risk" means the probability that a particular threat will exploit a particular vulnerability of an information technology resource.~~

~~(10) "Protection program" means all the methods used by a state agency, including policies, standards, guidelines, and procedures to protect its information technology resources in such areas as:~~

- ~~(a) acceptable use;~~
- ~~(b) classification, ownership and custodial responsibilities;~~
- ~~(c) risk analysis;~~
- ~~(d) physical protection;~~
- ~~(e) logon id and password management;~~
- ~~(f) information access management;~~
- ~~(g) communications/network protection;~~
- ~~(h) virus control;~~
- ~~(i) contingency planning; and~~
- ~~(j) protection awareness training.~~

~~(11) "State agency" means any agency or administrative subunit of state government except the following:~~

- ~~(a) legislative and judicial branches;~~
- ~~(b) State Board of Education;~~
- ~~(c) Board of Regents; and~~
- ~~(d) institutions of higher education.~~

~~(12) "State laws affecting information technology protection" means Information Technology Act, Section 63D-1-301; Computer Crimes Act, Section 76-6-701 et seq.; Government Records Access and Management Act, Section 63-2-101 et seq.; Governmental Immunity Act, Section 63-30-1 et seq.; and Utah Procurement Code, Section 63-56-1 et seq.~~

~~(13) "State administrative rules affecting information technology protection" means Computer Software Licensing, Copyright, and Control, Rule R365-3; Human Resource Management, Rule R477-11; Information Technology Protection, Rule R365-4; State Surplus Property Disposal, Rule R28-1; or any other administrative rule affecting information technology protection.~~

~~R365-4-5. Compliance and Responsibilities.~~

~~(1) Each state agency that owns, leases, or contracts for an information technology resource shall:~~

~~(a) keep and maintain an inventory of the information technology resource, as defined in R365-4-4(5) (Refer to Fixed Assets Acquisition and Control, I 06.01.00, as revised 1 July 1986; State Accounting Policies and Procedures, on file for review at the Governor's Office of Planning and Budget.);~~

~~(b) designate an employee or employees to be responsible for administering the state agency's protection program and coordinating physical protection with the agency's facility coordinator and/or the State Division of Facilities Construction and Management, where applicable;~~

~~(c) determine appropriate protection methods necessary to protect an information technology resource consistent with:~~

—(i) the classification (Refer to Government Records Access and Management Act, Section 63-2-101 et seq.) and the value of the information technology resource;

—(ii) probable risks to the resource; and

—(iii) applicable federal laws, state laws, and state administrative rules affecting information technology protection, as defined in R365-4-4(4), (12) and (13);

—(d) implement appropriate protection methods, consistent with (e) (See also Information Technology Security Guidelines, October 1992, published by Utah Security Users Group, on file for review at the Governor's Office of Planning and Budget.);

—(e) properly dispose of an information technology resource consistent with:

—(i) the retention schedule (Refer to Government Records Access and Management Act, Section 63-2-101 et seq.), the value, and the sensitivity of the information technology resource; and

—(ii) applicable federal laws, state laws, and state administrative rules affecting information technology protection, as defined in R365-4-4(4), (12) and (13);

—(f) require each employee, contractor, volunteer, and customer who is given access to the information technology resource to certify that he/she understands:

—(i) the acceptable use of the information technology resource;

—(ii) his/her obligation to protect the information technology resource; and

—(iii) violations and penalties for unacceptable use;

—(g) warn anyone who accesses a state provided information technology resource that unauthorized use:

—(i) may result in prosecution; and

—(ii) is subject to monitoring by the agency as a means of insuring proper function and use;

—(h) take corrective action, in accordance with Human Resource Management Administrative Rule R477-11, against a person who violates the protection program;

—(i) document and review the protection program regularly, noting any variance from established procedures, and initiating corrective action;

—(j) coordinate the protection program with information technology service centers and customers, as applicable, to ensure protection needs can be met.

—(2) Each state agency or customer that uses or receives an information technology resource from a state agency shall protect the resource consistent with the requirements of the agency that owns, leases, or contracts for the resource, and with applicable federal laws, state laws, and state administrative rules affecting information technology protection, as defined in R365-4-4(4), (12) and (13).

—(3) Each state information technology service center, in addition to the requirements in (1) and (2), shall:

—(a) identify customer protection requirements and information technology capabilities; and

—(b) implement appropriate protection methods consistent with identified customer requirements and technological capabilities.

—(4) The chief information officer shall periodically audit compliance with this rule in accordance with the Administrative Services Act, Section et seq. The chief information officer shall depend on the work of external auditors and an agency's internal auditor(s) where such resources are available and appropriate.

KEY: security*, information technology*, control and access*, protection*

1994

Notice of Continuation September 18, 1997

63D-1-301 et seq.

63-46a-3]



Health, Health Care Financing, Coverage and Reimbursement Policy **R414-7D** Financially Distressed Nursing Facility Pool

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 25194

FILED: 08/21/2002, 09:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In accordance with appropriations for FY 2003, the Department increased reimbursement to nursing facilities that serve Medicaid eligible residents by an aggregate amount of 12%. The Department determined that a small amount of the overall increase should be held in reserve to address the needs of certain nursing facilities that are financially distressed. This rule sets up the process to receive applications, evaluate need, and make payments to financially distressed facilities.

SUMMARY OF THE RULE OR CHANGE: In Section R414-7D-2: sets the applicable definitions for facilities and service area. In Section R414-7D-3: sets the criteria for qualifying for a payment from the pool. In Section R414-7D-4: sets the criteria for applications and award of payments.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5, 26-18-1, 26-18-2.3, and 26-18-3; and Subsections 26-1-30(2)(a), (b), and (w)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The rule explicitly limits payments to available appropriations. During the first quarter for which payments will be made, the Department anticipates that up to \$500,000 in state general funds will be awarded.

❖ **LOCAL GOVERNMENTS:** Local governments operate several nursing facilities. Local governments will be eligible to apply for these funds.

❖ **OTHER PERSONS:** Any nursing facility may apply for a hardship allowance. This will have a potential positive impact on nursing home operators. This should not result in added costs to other parties.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The application for a grant is voluntary. It is not anticipated that the application

process will be either cumbersome or expensive. The Department estimates that the cost to apply will be less than \$250 in time and personnel costs. Information to support the applications should already be available to the facility as part of their standard accounting practices.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department is appreciative of the work of the industry, the Governor, and the Legislature to fund a 12% increase for this industry. Facilities will be receiving a 7% across the board increase from rates in effect as of June 30, 2002. Many facilities will receive a property cost increase in addition to the 7%. It has been many years since the available appropriation allowed a significant adjustment to property costs for this industry. Finally, funds were held back to fund this financially distressed nursing home pool. This will have a positive fiscal impact on those nursing homes that might otherwise have to close their doors and leave underserved communities without nursing facility services in close proximity. Rod L. Betit

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH 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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2002

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 9/16/2002 at 4:00 PM, Cannon Health Building, 288 North 1460 West, Room 114, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2002

AUTHORIZED BY: Rod Betit, Executive Director

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

R414-7D. Financially Distressed Nursing Facility Pool.

R414-7D-1. Introduction and Authority.

(1) The provision of necessary medical care may be adversely affected in nursing facilities whose revenues are insufficient to cover the necessary costs to provide quality patient care. In such cases, the executive director may provide an allowance from the financially distressed nursing facility pool pursuant to the provisions of this section. To have access to the financially distressed nursing facility pool a facility must apply in writing for an allowance and must meet

the criteria in R414-7D-3 and 4. All written evidence must be certified by the owner and the governing board of the facility, if applicable.

(2) Authority for this rule is found in Sections 26-18-2.3, 26-1-5, 26-1-30(2)(a), (b), and (w), and 26-18-3.

R414-7D-2. Definitions.

For purposes of this rule the definitions in R414-1-1 apply. In addition:

(1) "Certified program" means a nursing facility program with Medicaid certification.

(2) "Medicaid certification" means the right to Medicaid reimbursement as a provider of a nursing facility program shown by a valid federal Health Care Financing Administration (HCFA) Form 1539 (7-84).

(3) "Nursing facility" means any Medicaid participating NF, SNF, ICF or a combination thereof, as defined in 42 USC 1396r(a) (1988), 42 CFR 440.150 and 442.12 (1993), and UCA 26-21-2(15).

(4) "Service area" means the boundaries of the distinct geographical area served by a type of certified program, the department to determine the exact area, based on fostering price competition and maintaining economy and efficiency in the Medicaid program.

R414-7D-3. Application Criteria.

In order to apply a nursing facility must meet the following criteria:

(1) The nursing facility has current Medicaid certification and is admitting new Medicaid clients to the extent beds are available and the patient's medical needs can be met by the facility's program;

(2) The executive director finds that the nursing facility is in financial distress despite reasonable efforts to cut costs and otherwise be efficient in the operation of the facility. The facility shall supply, upon request, the necessary documentation to allow for a review of the facility's financial condition and available reserves including projected income from investments, philanthropy and overall fund balances; and

(3) The nursing facility has not filed a petition for a chapter 7 bankruptcy.

R414-7D-4. Applications.

(1) Applications for assistance may be accepted on a semi-annual basis on the schedule determined by the executive director to the extent that there are available funds within current appropriations.

(2) The application of each qualified nursing facility, as determined by the executive director according to R414-7D-3, shall be reviewed by a committee composed of the executive director, or his designee, the director of the Division of Health Care Financing, and two other members appointed by the executive director. Any allowance granted must be supported by at least three members of the committee. The committee shall adopt criteria for the awarding of funds that support price competition, economy and efficiency in the operation of Medicaid certified nursing facilities, and also consider factors such as high labor costs, recent increases in patient acuity, building disasters or unusual costs attributable to status as a sole community provider. These funds will not be available to compensate for low occupancy in the facility or property costs in excess of \$20.00 per patient day.

(3) Allowances under this rule shall be available to a provider no sooner than the effective date of this rule. Reapplication by

participants shall be necessary at the beginning of each subsequent period by the deadline set by the executive director.

(4) A nursing facility may appeal the decision on an allowance to the Executive Director pursuant to the provisions of the Administrative Procedures Act.

KEY: Medicaid

2002

26-1-5

26-18-1

26-18-2.3

26-1-30(2)(a), (b), (w)

26-18-3

Professional Practices Advisory
Commission, Administration

R686-100

Professional Practices Advisory
Commission, Rules of Procedure:
Complaints and Hearings

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25223

FILED: 09/03/2002, 18:02

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to clarify definitions, provide clearer procedures for a stipulated agreement, provide for panel members and hearing officers to rotate methodically and clarify the Executive Secretary's role in Utah Professional Practices Advisory Commission (UPPAC) proceedings.

SUMMARY OF THE RULE OR CHANGE: Amendments clarify definitions, provide for methodical rotation of UPPAC panel members and hearing officers and make other changes in UPPAC proceedings.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-6-306(1)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to state budget. These changes can be implemented by UPPAC without additional expense.

❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. UPPAC is a state agency responsibility.

❖ OTHER PERSONS: There are no anticipated costs or savings to other persons. This is a licensing process; individuals may have clearer information, but no additional costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for school districts or individual educators involved with the UPPAC process.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses. Carol B. Lear, Executive Secretary

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

PROFESSIONAL PRACTICES ADVISORY
COMMISSION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2002

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R686. Professional Practices Advisory Commission, Administration.

R686-100. Professional Practices Advisory Commission, Rules of Procedure: Complaints and Hearings.

R686-100-1. Definitions.

A. "Allegation of misconduct" means a written or oral report alleging that an educator has engaged in unprofessional, criminal, or incompetent conduct; is unfit for duty; has lost his license in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or has committed some other violation of standards of ethical conduct, performance, or professional competence.

B. "Applicant for a license" means a person seeking a new license or seeking reinstatement of an expired, surrendered, suspended, or revoked license.

C. "Board" means the Utah State Board of Education.

D. "Computer Aided Credentials of Teachers in Utah System (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes such as:

- (1) personal directory information;
- (2) educational background;
- (3) endorsements;
- (4) employment history;
- (5) professional development information; and
- (6) a record of disciplinary action taken against the educator.

All information contained in an individual's CACTUS file is available to the individual, but is classified private or protected under Section 63-2-302 or 304 and is accessible only to specific designated individuals.

E. "License" means a teaching or administrative credential, including endorsements, which is issued by a state to signify

authorization for the person holding the license to provide professional services in the state's public schools.

F. "Commission" means the Professional Practices Advisory Commission as defined and authorized under Section 53A-6-301 et seq.

G. "Chair" means the Chair of the Commission.

H. "Complaint" means a written allegation or charge against an educator.

I. "Complainant" means the Utah State Office of Education.

J. "Days": in calculating any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included; the last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. Saturdays, Sundays and legal holidays shall not be included in calculating the period of time if the period prescribed or allowed is less than seven days, but shall be included in calculating periods of seven or more days.

K. "Educator" means a person who currently holds a license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training, to obtain a license.

L. "Executive Committee" means a subcommittee of the Commission consisting of the Executive Secretary, Chair, Vice-Chair, and one member of the Commission at large. All Executive Committee members, excluding the Executive Secretary, shall be selected by the Commission. Substitutes may be appointed from within the Commission by the Executive Secretary as needed.

M. "Executive Secretary" means an employee of the Utah State Office of Education who is appointed by the State Superintendent of Public Instruction to serve as the executive officer, and a non-voting member, of the Commission.

N. "Hearing" means a proceeding in which allegations made in a complaint are examined, where each party has the opportunity to present witnesses and evidence relevant to the complaint and respond to witnesses or evidence presented by the other party. At the conclusion of a hearing the hearing officer, after consulting with members of the Commission assigned to assist in the hearing, prepares a hearing report and submits it to the Executive Secretary.

O. "Hearing Officer" means a person who is experienced in matters relating to administrative procedures, education and education law and is either a member of the Utah State Bar Association or a person not a member of the bar who has received specialized training in conducting administrative hearings, and is appointed by the Executive Secretary at the request of the Commission to manage the proceedings of a hearing. The hearing officer may not be an acting member of the Commission. The hearing officer has broad authority to regulate the course of the hearing and dispose of procedural requests but shall not have a vote as to the recommended disposition of a case.

P. "Hearing Panel" means a hearing officer and three or more members of the Commission agreed upon by the Commission to assist the hearing officer in conjunction with the hearing panel in conducting a hearing and preparing a hearing report.

Q. "Hearing report" means a report prepared by the hearing officer with the assistance of the hearing panel at the conclusion of a hearing. The report includes a recommended disposition, detailed findings of fact and conclusions of law based upon the evidence presented in the hearing, relevant precedent, and applicable law and rule.

R. "Informant" means a person who submits information to the Commission concerning alleged misconduct by a person who may be subject to the jurisdiction of the Commission.

S. "Investigator" means a person who is knowledgeable about matters which could properly become part of a complaint before the Commission, as well as investigative procedures and rules and laws governing confidentiality, who is appointed by the Utah State Office of Education's Investigations Unit at the request of the Executive Secretary to investigate an allegation of misconduct.

T. "Jurisdiction" means the legal authority to hear and rule on a complaint.

U. "Licensing file" means a file that is opened and maintained on an educator following a written complaint to the Commission.

V. "National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator Information Clearinghouse" means a database maintained by NASDTEC for its members regarding persons whose licenses have been suspended or revoked.

W. "Office" means the Utah State Office of Education.

X. "Party" means the complainant or the respondent.

Y. "Recommended disposition" means a recommendation for resolution of a complaint.

Z. "Request for agency action" means a document prepared by the Executive Secretary containing one or more allegations of misconduct by an educator, a recommended course of action, and related information.

AA. "Respondent" means the party against whom a complaint is filed.

BB. "Serve" or "service," as used to refer to the provision of notice to a person, means delivery of a written document or its contents to the person or persons in question. Delivery may be made in person, by mail or by other means reasonably calculated, under all of the circumstances, to apprise the interested person or persons to the extent reasonably practical or practicable of the information contained in the document. Service of a complaint upon an educator shall be by mail to the address of the educator as shown upon the records of the Commission.

CC. "State" means the United States or one of the United States; a foreign country or one of its subordinate units occupying a position similar to that of one of the United States; or a territorial unit, of the United States or a foreign country, with a distinct general body of law.

DD. "Stipulated agreement" means an agreement between a respondent and the Board or a respondent and the Commission under which disciplinary action against an educator's license status has been taken, in lieu of a hearing. At anytime after an investigative letter has been sent, a stipulated agreement may be negotiated between the parties, approved by the Commission, and becomes binding when approved by the Board, if necessary.

EE. "Final action" means any action by the Commission or the Board which concludes an investigation of an allegation of misconduct against a licensed educator.

R686-100-2. Authority and Purpose.

A. This rule is authorized by Section 53A-6-306(1)(a) which directs the Commission to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to establish procedures regarding complaints against educators and licensing hearings for the Commission to follow. The standards and procedures of the Utah

Administrative Procedures Act do not apply to this rule under the exemption of Section 63-46b-1(2)(d). However, the Commission reserves the right to invoke and use sections or provisions of the Utah Administrative Procedures Act as found in Section 63-46b as necessary to adjudicate an issue.

R686-100-3. Receipt of Allegations of Misconduct and Disposition by Commission.

A. Initiating Proceedings Against an Educator: The Executive Secretary may initiate proceedings against an educator upon receiving an allegation of misconduct or upon the Executive Secretary's own initiative.

(1) An informant may be asked to submit information in writing, including the following:

(a) Name, position (e.g. administrator, teacher, parent, student), telephone number and address of the informant;

(b) Name, position (e.g. administrator, teacher, candidate), and if known, the address and telephone number of the educator against whom the allegations are made;

(c) The allegations and supporting information;

(d) A statement of the relief or action sought from the agency;

(e) Signature of the informant and date.

(2) If an informant submits a written allegation of misconduct as provided in Section R686-100-3A(1) above, the informant shall be told he may receive notification of final actions taken by the Commission or the Board regarding the allegations by filing a written request for information with the Executive Secretary.

(3) Allegations received through telephone calls, letters, newspaper articles, notices from other states or other means may also form the basis for initiating proceedings against an educator.

R686-100-4. Review of Request for Agency Action.

A. Initial Review: Upon reviewing the request, the Executive Secretary or the Executive Committee or both shall recommend one of the following to the Commission:

B. Dismiss: If the Executive Committee determines that the Commission lacks jurisdiction or that the request for agency action does not state a cause of action which the Commission should address, the Executive Committee shall recommend that the Commission dismiss the request. The informant shall be served with notice of the action. If the informant believes that the dismissal has been made in error, the informant may request review by the State Superintendent of Public Instruction within 10 days of the mailing date of the Notice of Dismissal. The Superintendent's decision relative to the dismissal is final.

C. Initiate an Investigation: If the Executive Secretary and the Executive Committee determine that the Commission has jurisdiction and that the request states a cause of action which may be appropriately addressed by the Commission, the Executive Secretary shall ask the Investigations Unit to appoint an investigator to gather evidence relating to the allegations. The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations, including to the extent reasonably practicable all persons specifically named in the request for agency action, and prepare a written report of the findings of the investigation. Should the investigator discover evidence of any additional allegation which should have been included in the original request, it may be included in the investigation report. The completed report shall be submitted to the Executive Secretary, who shall review the report with the Commission. The investigation report shall become part of the permanent case file.

D. Prior to the initiation of any investigation, the Executive Secretary shall send a letter to the educator to be investigated and a copy of the letter to the employing school district or to the district of most recent employment, with information that an investigation has been initiated.

E. Secondary Review: The Executive Committee shall review the investigation report and upon completing its review shall recommend one of the following to the Commission:

(1) Dismiss: If the Executive Committee determines no further action should be taken, the Executive Committee shall recommend to the Commission to dismiss the request for agency action as provided in Section R686-100-4B, above; or

(2) Prepare and Serve COMPLAINT: If the Executive Committee determines further action is appropriate, the Executive Committee shall recommend to the Commission to direct the Executive Secretary to prepare and serve a complaint and a copy of these rules upon the respondent. The complaint shall have a heading similar to that used for the request for agency action, and shall include in the body:

(a) A statement of the legal authority and jurisdiction under which the action is being taken;

(b) A statement of the facts and allegations upon which the complaint is based;

(c) Other information which the Commission believes to be necessary to enable the respondent to understand and address the allegations;

(d) A statement of the potential consequences should the allegations be found to be true;

(e) A statement that, if the respondent wishes to respond to the complaint or request a hearing, or discuss a stipulated agreement, a written response shall be filed with the Executive Secretary of the Professional Practices Advisory Commission, 250 East 500 South, Salt Lake City, Utah 84111 within 30 days of the date when the complaint was mailed to the respondent, and the potential consequences should the respondent default by failing to respond to the complaint within the designated time;

(f) Notice that, if a hearing is requested, the hearing shall be scheduled not less than 25 days, nor more than 180 days, after receipt of the respondent's response and hearing request by the Executive Secretary, unless a different date is approved by the Commission for good cause shown or is agreed upon by both parties in writing.

~~(3) a stipulated agreement between the parties.~~

~~(3)4) [Provide] that the action be taken by the Commission[with notice of the action taken].~~

F. RESPONSE to the complaint: If the respondent wishes to respond to the complaint, the respondent shall submit a written response signed by the respondent or his representative to the Executive Secretary within 30 days of the mailing date of the complaint. The response may include a request for a hearing or a stipulated agreement and shall include:

(1) The file number of the complaint;

(2) The names of the parties;

(3) A statement of the relief that the respondent seeks; and

(4) A statement of the reasons that the relief requested should be granted.

(5) Final Review: As soon as reasonably practicable after receiving the response, or following the passage of the 30 day response period if no response is received, the Executive Secretary shall review any response received, the investigative report, and other relevant information with the Executive Committee. The

Executive Committee shall then recommend one of the following to the Commission:

(a) Enter a Default: If the respondent fails to file a response, fails to request a hearing, fails to request a stipulated agreement within 30 days after service of the complaint, or surrenders a license in the face of allegations of misconduct without benefit of a stipulated agreement, the Executive Committee shall recommend to the Commission to enter the respondent's default and direct the Executive Secretary to prepare findings in default and a recommended disposition for submission to the Commission in accordance with Section R686-100-16.

(b) Dismiss the Complaint: If the Executive Committee determines that there are insufficient grounds to proceed with the complaint, the Executive Committee shall recommend to the Commission that the complaint be dismissed. If the Commission votes to uphold the dismissal, the informant and respondent shall each be served with notice of the dismissal. If the informant believes that the dismissal has been made in error the informant may request review by the State Superintendent of Public Instruction within 10 days of service of notice of the dismissal. The Superintendent's decision concerning the dismissal is final.

(c) Schedule a Hearing: If the respondent requests a hearing, the Commission shall direct the Executive Secretary to schedule a hearing as provided in Section R686-100-5.

(d) Respond to a request for a stipulated agreement: If the respondent requests to enter into a stipulated agreement at any time after an investigative letter has been sent, the Executive Secretary shall inform the Commission that the Commission may reject the request or authorize the Executive Secretary to meet with the respondent to prepare recommendations for a stipulated agreement.

(i) A stipulated agreement shall, at minimum, include the following:

(A) A summary of the facts, the allegations, the evidence relied upon by the Commission in its decision, and the respondent's response;

(B) A statement that the respondent has chosen to surrender his license rather than contest the charges in a hearing;

(C) A commitment that the respondent shall not provide professional services in a public school in any state or otherwise seek to obtain or use a license in any state unless or until the respondent first obtains a valid Utah license or clearance from the Board to obtain such a license;

(D) Provision for surrender of respondent's license;

(E) Acknowledgment that the surrender and the stipulated agreement will be reported to other states through the NASDTEC Educator Information Clearinghouse; and

(F) Other relevant provisions applicable to the case, such as remediation, counseling, and conditions--if any--under which the respondent could seek restoration of license.

(ii) The stipulated agreement shall be forwarded to the Commission for consideration.

(iii) If the Commission rejects the request or the stipulated agreement, the respondent shall be served with notice of the decision, which shall be final, and the proceedings shall continue from the point under these procedures at which the request was made, as if the request had not been submitted.

(iv) If the Commission accepts the stipulated agreement, the agreement shall be forwarded to the Board for consideration.

(v) If the Board rejects the agreement, the Executive Secretary shall notify the parties of the decision and the proceedings shall

continue from the point under these procedures at which the request was made, as if the request had not been submitted.

(e) Recommend that the Commission direct the Executive Secretary to take appropriate disciplinary action against an educator which may include: an admonishment, a letter of warning, a written reprimand, or an agreement not to teach.

(i) Documentation of this disciplinary action shall be sent to the respondent's employing school district or to a district where the respondent finds employment, if so directed.

(ii) Additional conditions of retention and documentation of disciplinary actions taken by the Commission are provided in R686-100-15.

G. Agreement not to teach:

(1) If compelling circumstances exist, as determined by the Commission, an educator may be offered an agreement not to be employed in the schools of any state without thorough and exhaustive review of all allegations of misconduct.

(2) Compelling circumstances may include a single serious allegation with mitigating circumstances that did not involve students within a long-term otherwise exemplary career.

(3) Other provisions:

(a) The educator shall surrender his educator license to the Commission;

(b) The NASDTEC Clearinghouse shall receive notification of the invalidation of the educator's license;

(c) The educator ~~shall~~ may be required to provide annually to the Commission employment and current address information;

(d) Acknowledgment may be made of the existence of the agreement not to teach, otherwise the agreement and its provisions shall remain confidential between the Commission and the educator.

(e) Should the educator breach the agreement not to teach, the agreement shall be voidable at the sole discretion of the Commission and the ~~educator shall be subject to~~ Commission may initiate further disciplinary action [by the Commission or the Board] against the educator.

H. Surrender:

(1) Should an educator surrender his license, the surrender shall have the effect of revocation unless otherwise designated by the Commission;

(2) The Board shall receive official notification of the surrender at an official Board meeting; and

(3) The Executive Secretary shall enter findings in the educator's licensing file explaining the circumstances of the surrender.

(4) Surrender of an educator's license is not a final ~~disposition~~ action. Surrender shall include a stipulated agreement or findings of fact, as determined by the Commission, to complete the educator's misconduct file, except as provided in Section (6) and (7) of this part. ~~[The Board shall also take action to suspend or revoke a license following a surrender.]~~

(5) Upon receipt of the educator's license by the Executive Secretary of the Commission, the educator shall be notified in a timely manner that:

(a) he has the right to a hearing before the Commission to contest specific allegations against him;

(b) he has a right to consult an attorney concerning the allegations;

(c) absent response by the educator, the educator admits that the allegations set forth in the complaint are substantially true;

(d) the Board may take action to suspend or revoke the educator license following the surrender and notice of procedures and consequences to the educator; and

(e) following final administrative action by the Commission or action by the Board, the status of the educator's license shall be indicated on the educator's CACTUS file.

(6) An educator who agrees to surrender his license pursuant to a plea, diversion, or similar agreement from a court shall be deemed to have waived his right to a stipulated agreement or hearing before the Commission. The Board may take action to revoke his license upon receipt of the applicable plea or diversion agreement from the court.

(7) An educator who returns his license to the Commission without signing a stipulated agreement or requesting a hearing within 60 days after the receipt of his license shall be deemed to have waived his right to an agreement or a hearing before the Commission.

R686-100-5. Hearing Procedures.

A. Scheduling the Hearing: The Commission shall agree upon Commission panel members, and the Executive Secretary shall appoint a hearing officer from among a list of hearing officers identified by the state procurement process approved by the Commission, and schedule the date, time, and place for the hearing. The selection of hearing officers shall be on a rotating basis, to the extent practicable, from the list of available hearing officers. The selection of a hearing officer shall also be made based on availability of individual hearing officers and whether any financial or personal interest or prior relationship with parties might affect the hearing officer's impartiality or otherwise constitute a conflict of interest. The date for the hearing shall be scheduled not less than 25 days nor more than 180 days from the date the response is received by the Executive Secretary. If exceptional circumstances exist which make it impracticable for a party to be present in person, the Executive Secretary may, with the consent of the parties, permit participation by electronic means. The required scheduling periods may be waived by mutual written consent of the parties or by the Commission for good cause shown.

B. Change of Hearing Date:

(1) A request for change of hearing date shall be submitted in writing and received by the Executive Secretary at least five days prior to the scheduled date of the hearing. The request may originate from either party and shall show cause.

(2) The Executive Secretary shall make the determination of whether the cause stated in the request is sufficient to warrant a change of hearing date.

(a) If the cause is found to be sufficient, the Executive Secretary shall promptly notify all parties of the new time, date, and place for the hearing.

(b) If the cause is found to be insufficient, the Executive Secretary shall immediately notify the party making the request and the hearing shall proceed as originally scheduled.

(c) The Executive Secretary and the parties may waive the time period required for requesting a change of hearing date for exceptional circumstances.

R686-100-6. Appointment and Duties of the Hearing Panel.

A. Hearing Officer: The Executive Secretary shall appoint a hearing officer at the request of the Commission to chair the hearing panel and conduct the hearing. The hearing officer:

(1) May require the parties to submit briefs and lists of witnesses prior to the hearing;

(2) Shall preside at the hearing and regulate the course of the proceedings;

(3) May administer oaths to witnesses as follows: "Do you swear or affirm that the testimony you will give is the truth?";

(4) May take testimony, rule on questions of evidence, and ask questions of witnesses to clarify specific issues;

(5) Shall prepare a hearing report at the conclusion of the proceedings in consultation with other panel members.

B. Commission Panel Members: The Commission shall agree upon three or more Commission members to serve as Commission members of the hearing panel. As directed by the Commission, former Commission members who have served on the Commission within the three years prior to the date set for the hearing may be used as panel members. The majority of panel members shall be current Commission members.

(1) The selection of panel members shall be on a rotating basis to the extent practicable. However, the selection shall also accommodate the availability of panel members.

~~(1)~~2) The majority of a panel shall be educators.

~~(2)~~3) If the respondent is a teacher, at least one panel member shall be a teacher. If the respondent is an administrator, at least one panel member shall be an administrator unless the respondent objects to the configuration of the panel.

~~(3)~~4) Duties of the Commission panel members include:

(a) Assisting the hearing officer by providing information concerning common standards and practices of educators in the respondent's particular field of practice and in the situations alleged;

(b) Asking questions of all witnesses to clarify specific issues;

(c) Reviewing all briefs and evidence presented at the hearing;

(d) Assisting the hearing officer in preparing the hearing report.

~~(4)~~5) The panel members shall receive for review relevant written materials including the initial complaint and briefs if ordered by the hearing officer, at least 30 minutes prior to the hearing.

~~(5)~~6) The Executive Secretary may make an emergency substitution of a Commission panel member for cause with the agreement of the parties. The agreement should be in writing but if time does not permit written communication of the agreement to reach the Executive Secretary prior to the scheduled time of the hearing, an Acceptance of Substituted Hearing Panel Member shall be signed by the parties prior to commencement of the hearing.

C. Disqualification of a panel member:

(1) Hearing Officer:

(a) A party may seek disqualification of a hearing officer by submitting a written request for disqualification to the Executive Secretary, which request must be received not less than 15 days before a scheduled hearing. The Executive Secretary shall review the request and supporting evidence and, upon a finding that the reasons for the request are substantial and sufficient, shall appoint a new hearing officer and, if necessary, reschedule the hearing.

(b) If the Executive Secretary denies the request, the party requesting the disqualification shall be notified not less than ten days prior to the date of the hearing. The requesting party may submit a written appeal of the denial to the State Superintendent, which request must be received not less than five days prior to the hearing date. If the State Superintendent finds that the appeal is justified, he shall direct the Executive Secretary to appoint a new hearing officer and, if necessary, reschedule the hearing.

(c) The decision of the State Superintendent is final.

(d) Failure of a party to meet the time requirements of Section R686-100-6C(1) shall result in denial of the request or appeal; if the Executive Secretary fails to meet the time requirements, the request or appeal shall be approved.

(2) Commission panel member:

(a) A Commission member shall disqualify himself as a panel member due to any known financial or personal interest, prior relationship or other association that would compromise the panel member's ability to make an impartial decision.

~~(a)~~ (b) A party may seek disqualification of a Commission panel member by submitting a written request for disqualification to the hearing officer, which request must be received not less than 15 days before a scheduled hearing. The hearing officer shall review the request and supporting evidence and, upon a finding that the reasons for the request are substantial and compelling, shall disqualify the panel member. If the disqualification leaves the hearing panel with fewer than three Commission panel members, the Commission shall appoint a replacement and the hearing officer shall, if necessary, reschedule the hearing.

~~(b)~~ (c) If the hearing officer denies the request, the party requesting the disqualification shall be notified not less than ten days prior to the date of the hearing. The requesting party may submit a written appeal of the denial to the State Superintendent, which request must be received not less than five days prior to the hearing date. If the State Superintendent finds that the appeal is justified, he shall direct the hearing officer to disqualify the panel member.

~~(c)~~ (d) If a disqualification leaves the hearing panel with fewer than three Commission panel members, the Commission shall agree upon a replacement and the hearing officer shall, if necessary, reschedule the hearing.

~~(d)~~ (e) The decision of the State Superintendent is final.

~~(e)~~ (f) Failure of a party to meet the time requirements of Section R686-100-7C(2) shall result in denial of the request or appeal; if the hearing officer fails to meet the time requirements, the request or appeal shall be approved.

R686-100-7. Preliminary Instructions to Parties to a Hearing.

A. Not less than 20 days before the date of a hearing the Executive Secretary shall provide the parties with the following information:

- (1) Date, time, and location of the hearing;
- (2) Names and school district affiliations of the Commission members on the hearing panel, and the name of the hearing officer;
- (3) Procedures for objecting to any member of the hearing panel; and
- (4) Procedures for requesting a change in the hearing date.

B. Not less than 15 days before the date of the hearing, the respondent and the complainant shall serve the following upon the other party and submit a copy and proof of service to the hearing officer:

(1) A brief containing any procedural and evidentiary motions along with that party's position regarding the allegations. Submitted briefs shall include relevant laws, rules, and precedent;

(2) The name of the person who will represent the party at the hearing, a list of witnesses who will be called, a summary of the testimony which each witness is expected to present, and a summary of documentary evidence which will be submitted. If either party fails to comply with identification of witnesses or documentary evidence in a fair and timely manner and consistent with the

provisions of this rule, the hearing officer may limit either party's presentation of witnesses and documentary evidence at the hearing.

C. Upon receipt of any of the above documents, the hearing officer shall provide a copy of the documents to each of the Commission panel members for review at least one hour prior to the hearing.

D. If a party fails to comply in good faith with a directive of the hearing officer under Section R686-100-7A, including time requirements for service, the hearing officer may prohibit introduction of the testimony or evidence or take other steps reasonably appropriate under the circumstances including, in extreme cases of noncompliance, entry of a default against the offending party.

E. Parties shall provide materials to the hearing officer, panel members and Commission as directed under this rule. Materials shall not be provided directly to panel members until and unless parties are so directed by the hearing officer.

R686-100-8. Hearing Parties' Representation.

A. Complainant: The Complainant shall be represented by a person appointed by the Investigations Unit of the Utah State Office of Education.

B. Respondent: A respondent may represent himself or be represented, at his own cost, by another person of his choosing.

C. The informant has no right to individual representation at the hearing or to be present or heard at the hearing unless called as a witness.

R686-100-9. Discovery Prior to a Hearing.

A. Discovery shall be permitted to the extent necessary to obtain relevant information necessary to support claims or defenses, as determined by the appointed hearing officer.

B. Discovery, especially burdensome or unduly legalistic discovery, may not be used to delay a hearing.

C. Discovery may be limited by the hearing officer at his discretion or upon a motion by either party. The hearing officer makes the final determination as to the scope of discovery.

D. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence shall be issued upon request at least five working days prior to the hearing by the Executive Secretary in accordance with Section 53A-6-603 when requested by either party or any of the panel members.

E. Either party or its representative may request the names of witnesses who have been asked to testify for the opposing party and to receive a copy of or examine all documents and exhibits that the opposing party intends to present as evidence during the hearing.

F. No witness or evidence may be presented at the hearing if the opposing party has requested to be notified of such information and has not been fairly apprised at least five days prior to the hearing. The parties may waive such time period only by written agreement.

G. No expert witness report or testimony may be presented at the hearing unless the requirements of Section R686-100-13 have been met.

R686-100-10. Burden and Standard of Proof for Commission Proceedings.

A. In matters other than those involving applicants for licensing, and excepting the presumptions under Section R686-100-14G, the complainant shall have the burden of proving that action against the license is appropriate.

B. An applicant for licensing shall bear the burden of proving that licensing is appropriate.

C. Standard of proof: The standard of proof in all Commission hearings is a preponderance of the evidence.

D. Evidence: The Utah Rules of Evidence are not applicable to Commission proceedings. The criteria to decide evidentiary questions shall be:

- (1) reasonable reliability of the offered evidence;
- (2) fairness to both parties; and
- (3) usefulness to the Commission in reaching a decision.

E. The applicability and admissibility of evidence consistent with this rule shall be in the sole discretion of the hearing officer.

R686-100-11. Department.

A. Parties, their representatives, witnesses, and other persons present during a hearing shall conduct themselves in an appropriate manner during hearings, giving due respect to members of the hearing panel and complying with the instructions of the hearing officer. The hearing officer may expel persons from the hearing room who fail to conduct themselves in an appropriate manner and may, in response to extreme instances of noncompliance, disallow testimony or declare an offending party to be in default.

B. Parties, attorneys for parties, or other participants in the professional practices investigation and hearing process shall not harass, intimidate or pressure witnesses or other hearing participants, nor shall they direct others to harass, intimidate or pressure witnesses or participants.

R686-100-12. Hearing Record.

A. The hearing shall be tape recorded at the Commission's expense, and the tapes shall become part of the permanent case record, unless otherwise agreed upon by all parties.

B. Individual parties may not make recordings of the proceedings without notice to and consent of the Executive Secretary.

C. Any party, at his own expense, may have a person approved by the Commission prepare a transcript of the hearing.

D. If an exhibit is admitted as evidence, the record shall reflect the contents of the exhibit.

E. All evidence and statements presented at a hearing shall become part of the permanent case file and shall not be removed except by order of the Board.

F. Taped proceedings may be reviewed upon request of a party under supervision of the Executive Secretary and only at the State Office of Education.

R686-100-13. Expert Witnesses in Commission Proceedings.

A. A party may call an expert witness at its own expense. Notice of intent of a party to call an expert witness, the identity and qualifications of such expert witness and the purpose for which the expert witness is to be called shall be provided to the hearing officer and the opposing party at least 20 days prior to the hearing date.

B. The hearing officer may appoint any expert witness agreed upon by the parties or of the hearing officer's own selection. An expert so appointed shall be informed of his duties by the hearing officer in writing, a copy of which shall become part of the permanent case file. The expert shall advise the hearing panel and the parties of his findings and may thereafter be called to testify by the hearing panel or by any party. He shall be subject to cross-examination by each party or by any of the hearing panel members.

C. Defects in the qualifications of expert witnesses, once a minimum threshold of expertise is established, go to the weight to be given their testimony and not to its admissibility.

D. Experts who are members of the Complainant's staff or a school district staff may testify and have their testimony considered as part of the record along with that of any other expert.

E. Any report of an expert witness which a party intends to introduce into evidence shall be provided to the opposing party at least 10 days prior to the hearing date.

R686-100-14. Evidence and Participation in Commission Proceedings.

A. The hearing officer may not exclude evidence solely because it is hearsay.

B. The hearing officer shall afford each party the opportunity to produce witnesses, present evidence, argue, respond, cross-examine witnesses who testify in person at the hearing, and submit rebuttal evidence.

C. If a party intends to submit documentary evidence, the party intending to present such evidence shall provide one copy to each member of the hearing panel at least one hour prior to the hearing, and one copy to the opposing party.

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

E. In any case involving allegations of child abuse or of a sexual offense against a child, upon request of either party or by a member of the hearing panel, the hearing officer may determine whether a significant risk exists that the child would suffer serious emotional or mental harm if required to testify in the respondent's presence, or whether a significant risk exists that the child's testimony would be inherently unreliable if required to testify in the respondent's presence. If the hearing officer determines either to be the case, then the child's testimony may be admitted in one of the following ways:

(1) An oral statement of a victim or witness younger than 18 years of age which is recorded prior to the filing of a complaint shall be admissible as evidence in a hearing regarding the offense if:

(a) No attorney for either party is in the child's presence when the statement is recorded;

(b) The recording is visual and aural and is recorded on film or videotape or by other electronic means;

(c) The recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and the recording is accurate and has not been altered; and

(d) Each voice in the recording is identified.

(2) The testimony of any witness or victim younger than 18 years of age may be taken in a room other than the hearing room, and be transmitted by closed circuit equipment to another room where it can be viewed by the respondent. All of the following conditions shall be observed:

(a) Only the hearing panel members, attorneys for each party, persons necessary to operate equipment, and a person approved by the hearing officer whose presence contributes to the welfare and emotional well-being of the child may be with the child during his testimony.

(b) The respondent may not be present during the child's testimony;

(c) The hearing officer shall ensure that the child cannot hear or see the respondent;

(d) The respondent shall be permitted to observe and hear, but not communicate with, the child; and

(e) Only hearing panel members and the attorneys may question the child.

(3) The testimony of any witness or victim younger than 18 years of age may be taken outside the hearing room and recorded if the provisions of Sections R686-100-14E(2)(a)(b)(c) and (e) and the following are observed:

(a) The recording is both visual and aural and recorded on film or videotape or by other electronic means;

(b) The recording equipment is capable of making an accurate recording, the operator is competent, and the recording is accurate and is not altered;

(c) Each voice on the recording is identified; and

(d) Each party is given an opportunity to view the recording before it is shown in the hearing room.

(4) If the hearing officer determines that the testimony of a child will be taken under Section R686-100-14E(1)(2) or (3) above, the child may not be required to testify in any proceeding where the recorded testimony is used.

F. On his own motion or upon objection by a party, the hearing officer:

(1) May exclude evidence that the hearing officer determines to be irrelevant, immaterial, or unduly repetitious;

(2) Shall exclude evidence that is privileged under law applicable to administrative proceedings in Utah unless waived;

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

(4) May take official notice of any facts that could be judicially noticed under judicial or administrative laws of Utah, or from the record of other proceedings before the agency.

G. Presumptions:

(1) A rebuttable evidentiary presumption exists that a person has committed a sexual offense against a minor child if the person has:

(a) Been found, pursuant to a criminal, civil, or administrative action to have committed a sexual offense against a minor;

(b) Failed to defend himself against such a charge when given a reasonable opportunity to do so; or

(c) Voluntarily surrendered a license or allowed a license to lapse in the face of a charge of having committed a sexual offense against a minor.

(2) A rebuttable evidentiary presumption exists that a person is unfit to serve as an educator if the person has:

(a) Been convicted of a felony;

(b) Been charged with a felony and subsequently convicted of a lesser related charge pursuant to a plea bargain or plea in abeyance; or

(c) Lost his license in another state through revocation or suspension, or through surrender of a license or allowing a license to lapse in the face of an allegation of misconduct, if the person would not currently be eligible to regain his license in that state.

H. The Hearing Officer may confer with the Executive Secretary or the panel members or both while preparing the Hearing Report. The Hearing Officer may request the Executive Secretary to confer with the Hearing Officer and panel following the hearing.

R686-100-15. Hearing Report.

A. Within 20 days after the hearing, or within 20 days after the deadline imposed for the filing of any post-hearing materials

permitted by the hearing officer, the hearing officer shall prepare, sign and issue a Hearing Report consistent with the recommendations of the panel that includes:

(1) A detailed findings of fact and conclusions of law based upon the evidence of record or on facts officially noted. Findings of fact may not be based solely upon hearsay, and conclusions shall be based upon competent evidence;

(2) A statement of relevant precedent;

(3) A statement of applicable law and rule;

(4) A recommended disposition of the Commission panel members which shall be one of the following:

(a) Dismissal of the Complaint: The hearing report shall indicate that the complaint should be dismissed and that no further action should be taken.

(b) Warning: The hearing report shall indicate that respondent's conduct is deemed unprofessional and that the hearing report shall constitute an official warning. The hearing report may indicate if the letter of warning shall be sent to the employing school district, if the letter and notation of warning shall be retained in the respondent's licensing and CACTUS files and for how long the letter and notation of warning shall be retained. If the hearing report has no specified time period for retention of the letter of warning, the letter and notation shall be retained permanently. The report shall also state that no further action concerning the complaint should be taken and that the complaint and disposition could be considered should the respondent's conduct be brought into question in the future.

(c) Reprimand: The hearing report shall indicate that the respondent's conduct is deemed unprofessional and that the hearing report shall constitute an official reprimand. The hearing report shall indicate that the employing school board shall receive a copy of the reprimand and that record of the reprimand shall be made on all Utah State Board of Education licensing records maintained in the licensing file, to include a notation of the letter of reprimand in the respondent's licensing files. The hearing report may also include a recommendation for how long the reprimand and the notation of the reprimand shall be maintained in the respondent's file and conditions under which it could be removed. If the hearing report has no specified time period for retention of the letter and notation of reprimand, they shall be retained permanently. The report shall also state that no further action concerning the complaint should be taken and that the complaint and disposition could be considered should the respondent's conduct be brought into question in the future.

(d) It is the respondent's responsibility to petition the Commission for removal of letters of warning and reprimand from his licensing and CACTUS files.

(e) Probation: The hearing report shall determine that the respondent's conduct was unprofessional, that the respondent shall not lose his license, but that a probationary period is appropriate. If the report recommends probation, the report shall designate:

(i) a probationary time period;

(ii) conditions that can be monitored;

(iii) a person or entity to monitor a respondent's probation;

(iv) a statement providing for costs of probation.

(v) whether or not the respondent may work in any capacity in education during the probationary period.

A probation may be stated as a plea in abeyance: The respondent's penalty is stayed subject to the satisfactory completion of probationary conditions. The decision shall provide for discipline should the probationary conditions not be completed.

(f) Suspension: The hearing report shall recommend to the State Board of Education that the license of the respondent be suspended for a specific period of time and until specified reinstatement conditions have been met before respondent may petition for reinstatement of his license. The hearing report shall indicate that, should the Board confirm the recommended decision, the respondent shall return the printed suspended license to the State Office of Education and that the Educator Licensing Section of the Utah State Office of Education will notify the employing school district, all other Utah school districts, and all other state, territorial, and national licensing offices or clearing houses of the suspension in accordance with R277-514.

(g) Revocation: The hearing report shall recommend to the State Board of Education that the license of the respondent be revoked for a period of not less than five years. The hearing report shall indicate that should the Board confirm the recommended decision, the respondent shall return the revoked license to the State Office of Education and that the Educator Licensing Section of the Utah State Office of Education will notify the employing school district, all other Utah school districts, and all other state, territorial, and national licensing offices or clearing houses of the revocation in accordance with R277-514.

(5) The hearing report may recommend that the warning letter or that the reprimand remain permanently in the licensing file. The hearing report shall also provide that the substance of the warning letter or reprimand or terms of probation may be communicated by designated USOE employees to prospective employers upon request.

(6) Notice of the right to appeal; and

(7) Time limits applicable to appeal.

B. Processing the Hearing Report:

(1) The hearing officer shall circulate the draft report to hearing panel members prior to the 20 day completion deadline of the hearing report.

(2) Hearing panel members shall notify the hearing officer of any changes to the report as soon as possible after receiving the report and prior to the 20 day completion deadline of the hearing report.

(3) The hearing officer shall file the completed hearing report with the Executive Secretary, who shall review the report with the Commission.

(4) If the Commission, upon review of the hearing report, finds by majority vote, that there have been significant procedural errors in the hearing process or that the weight of the evidence does not support the conclusions of the hearing report, the Commission as a whole may direct the Executive Secretary to prepare an alternate hearing report and follow procedures under R686-100-15B(2).

(5) The Executive Secretary may be present, at the discretion of the Commission, but may only participate in the Commission's deliberation as a resource to the Commission in explaining the hearing report and answering any procedural questions raised by Commission members.

~~(5)~~ (6) If the Commission finds that there have not been significant procedural errors or that recommendations are based upon a reasonable interpretation of the evidence presented at the hearing, the Commission shall vote to uphold the hearing officer's report and do one of the following:

(a) If the recommendation is for final action to be taken by the Commission, the Commission shall direct the Executive Secretary to prepare a corresponding final order and serve all parties with a copy of the order and hearing report. A copy of the order and the hearing

report shall be placed in and become part of the permanent case file. The order shall be effective upon approval by the Commission.

(b) If the recommendation is for final action to be taken by the Board, the Executive Secretary shall forward a copy of the hearing report to the State Board of Education for its further action. A copy of the hearing report shall also be placed in and become part of the permanent case file.

~~(6)~~ (7) If the Commission determines that procedural errors or that the hearing officer's report is not based upon a reasonable interpretation of the evidence presented at the hearing to the extent that an amended hearing report cannot be agreed upon, the Commission shall direct the Executive Secretary to schedule the matter for rehearing before a new hearing officer and panel.

C. Consistent with Section 63-2-301(1)(c), the final administrative disposition of all administrative proceedings, the Recommended Disposition section of the Hearing Report, of the Commission shall be public. The hearing findings/report of suspensions and expulsions shall be public information and shall be provided consistent with Section 63-2-301(1)(c). The Recommended Disposition portion of the Hearing Report of warnings, reprimands and probations (including the probationary conditions) shall be public information. All references to individuals and personally identifiable information about individuals not parties to the hearing shall be redacted prior to making the disposition public.

D. Deadlines within this section may be waived by the Commission for good cause shown.

R686-100-16. Default Procedures.

A. An order of default may be issued against a respondent under any of the following circumstances:

(1) The Executive Secretary may enter an order of default by preparing a report of default including the order of default, a statement of the grounds for default, and a recommended disposition if the respondent fails to file a response to a complaint for an additional 20 days following the time period allowed for response to a complaint under R686-100-5E.

(2) The hearing officer may enter an order of default against a respondent by preparing a hearing report including the order of default, a statement of the grounds for default and the recommended disposition if:

(a) The respondent fails to attend or participate in a properly scheduled hearing after receiving proper notice. The hearing officer may determine that the respondent has failed to attend a properly scheduled hearing if the respondent has not appeared within 30 minutes of the appointed time for the hearing to begin.

(b) The respondent or the respondent's representative is guilty of serious misconduct during the course of the hearing process as provided under Section R686-100-8D.

B. The report of default or hearing report shall be forwarded to the Commission by the Executive Secretary for further action under Section R686-100-16B.

R686-100-17. Appeal.

A. Either party may appeal a final action or recommendation of the Commission by requesting review following the procedures of R277-514-3 or R277-514-4.

B. If a party elects to appeal a Commission recommendation for a suspension of two years or more, or to appeal a Commission determination regarding a license revocation, the appellant shall follow the procedures of R277-514-3.

C. If a party elects to appeal a Commission recommendation for a suspension of less than two years or for any other issue, dismissal, or failure to discipline, the appeal shall be made directly to the Board under R277-514-4B.

D. The request for appeal shall consist of the following:

- (1) name, position, and address of appellant;
- (2) issue(s) being appealed; and
- (3) signature of appellant.

R686-100-18. Remedies for Individuals Beyond Commission Actions.

Despite Commission or Board actions, informants or other injured parties who feel that their rights have been compromised, impaired or not addressed by the provisions of this rule, may appeal directly to district court.

R686-100-19. Application for Licensing Following Denial or Loss of License.

A. An individual who has been denied licensing or lost his license through revocation or suspension, or through surrender of a license or allowing a license to lapse in the face of an allegation of misconduct, may request review to consider the possibility of a grant or reinstatement of a license.

(1) The request for review shall be in writing and addressed to the Executive Secretary, Professional Practices Advisory Commission, 250 East 500 South, Salt Lake City, Utah 84111, and shall have the following heading:

TABLE 1

| | | |
|--------------------------------|---|-----------------------------|
| |) | |
| Jane Doe, |) | Request for Agency Action |
| Petitioner |) | Following Denial or Loss of |
| vs |) | License |
| Utah State Office of Education |) | File no.: |
| Respondent. |) | |

B. The body of the request shall contain the following information:

- (1) Name and address of the individual requesting review;
- (2) Action being requested;
- (3) Evidence of compliance with terms and conditions of any remedial or disciplinary requirements or recommendations;
- (4) Reasons for reconsideration of past disciplinary action;
- (5) Signature of person requesting review.

C. The Executive Secretary shall review the request with the Commission.

(1) If the Commission determines that the request is invalid, the person requesting reinstatement shall be notified by certified mail of the denial.

(2) If the Commission determines that the request is valid, a hearing shall be scheduled and held as provided under Section R686-100-6.

D. Burden of Proof: The burden of proof for granting or reinstatement of a license shall fall on the individual seeking the license.

(1) Individuals requesting reinstatement of a suspended license must show sufficient evidence of compliance with any conditions imposed in the past disciplinary action as well as undergo a criminal background check in accordance with Utah law.

(2) Individuals requesting licensing following revocation shall show sufficient evidence of compliance with any conditions imposed in the past disciplinary action as well as providing evidence of qualifications for licensing as if the individual had never been licensed in Utah or any other state.

(3) Individuals requesting licensing following denial shall show sufficient evidence of completion of a rehabilitation or remediation program, if applicable.

R686-100-20. Reinstatement Hearing Procedures.

A. The individual seeking reinstatement of his license shall be the petitioner.

B. The petitioner shall have the responsibility of presenting the background of the case.

C. The petitioner shall present documentation or evidence that supports reinstatement.

D. The respondent (the State) shall present any evidence or documentation that would not support reinstatement.

E. Other evidence or witnesses shall be presented consistent with R686-100-14.

F. The appointed hearing officer shall rule on other procedural issues in a reinstatement hearing in a timely manner as they arise.

R686-100-21. Temporary Suspension of License Pending a Hearing.

A. If the Executive Secretary determines, after affording respondent an opportunity to discuss allegations of misconduct, that reasonable cause exists to believe that the charges will be proven to be correct and that permitting the respondent to retain his license prior to hearing would create unnecessary and unreasonable risks for children, then the Executive Secretary may order immediate suspension of the respondent's license pending final Board action.

B. Evidence of the temporary suspension may not be introduced at the hearing.

C. Notice of the temporary suspension shall be provided to other states under R277-514.

KEY: teacher certification, conduct[≠], hearings[≠]
~~March 6, 2001~~ **2002**
53A-6-306(1)(a)



**Professional Practices Advisory
 Commission, Administration
 R686-103
 Professional Practices and Conduct for
 Utah Educators**

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 25224
 FILED: 09/03/2002, 18:19

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to add a definition of "inappropriate" to provide greater clarity for educators.

SUMMARY OF THE RULE OR CHANGE: The rule adds a definition of "inappropriate."

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-6-306(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There are no anticipated costs or savings to state budget. The change is just a clarification.
- ❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The Utah Professional Practices Advisory Commission (UPPAC) is a state responsibility that districts/local boards have no obligation toward.
- ❖ OTHER PERSONS: There are no anticipated costs or savings to other persons. There is only more clarity.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. There is only clarification of acceptable educator conduct.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses. Carol B. Lear, Executive Secretary

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

PROFESSIONAL PRACTICES ADVISORY
COMMISSION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2002

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R686. Professional Practices Advisory Commission, Administration.

R686-103. Professional Practices and Conduct for Utah Educators.

R686-103-1. Definitions.

A. "Basic Administrative/Supervisory License" means the initial certificate issued by the Board which permits the holder to be employed in a public school position which requires administration or supervision of kindergarten, elementary, middle, or secondary levels.

[F]B. "Commission" means the Utah Professional Practices Advisory Commission as defined and authorized under Section 53A-6-301 et seq.

[B]C. "Competent" means an educator who is duly qualified, is skillful, and meets all the legal requirements of the educator's position.

[C]D. "Educator" means a licensed person who is paid on the teachers or administrators salary schedule and whose primary function is to provide instructional, counseling or administrative services in the public schools or administrative offices as assigned.

E. "Inappropriate" means conduct by an educator toward a student or minor that is unjustifiable because:

- (1) the conduct is illegal;
- (2) the conduct is inconsistent with Utah State Board of Education or Commission Administrative Rules; or
- (3) the conduct is inconsistent with the special position of trust of an educator.

[D]E. "Sexual contact" means:

- (1) the intentional touching of any sexual or intimate part of an individual;
- (2) causing, encouraging, or permitting an individual to touch any sexual or intimate part of another; or
- (3) any physical conduct of a sexual nature directed at an individual.

[E]G. "Sexual harassment" means any repeated or unwarranted verbal or physical advances, sexually explicit derogatory statements, or sexually discriminatory or explicit visual material or remarks made or displayed by an individual which is offensive or objectionable to the recipient or which causes the recipient discomfort or humiliation.

R686-103-2. Authority and Purpose.

A. This rule is authorized by Section 53A-6-306(1)(a) which directs the Commission to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to provide for competent practices and standards of moral and ethical conduct for educators in order to serve the needs of Utah students and to maintain the dignity of the education profession in the state of Utah.

R686-103-3. Commission Action if a Licensed Educator Violates the Provisions of Professional Practice and Conduct for Utah Educators.

A. The individual conduct of a professional educator at all levels reflects upon the practices, values, integrity and reputation of the Utah educational profession as a whole. Violation of this rule may result in the following:

- (1) A disciplinary letter that may effect the educator's ability to obtain employment as an educator;
- (2) A letter of reprimand that would be placed in the educator's certification file and in the personnel file(s) of the district(s) where the educator is employed or seeks employment;
- (3) A designated period of probationary status for a license holder. The probation may be for a specific or indefinite time period;
- (4) Suspension of the educator's license(s) that would prevent the educator from practicing education in the state of Utah or other states during the period of suspension; and
- (5) Revocation of the educator's license(s) for a minimum of five years.

B. This rule does not preclude alternative action by the Commission consistent with Utah law and Utah State Board of Education rules warranted under the facts of the case.

R686-103-4. Professionalism in Employment Practices.

An educator acting consistent with professional practices and standards shall:

A. assist only qualified persons, as defined by Utah law and Utah State Board of Education rules, to enter or continue in the education profession;

B. employ only persons qualified or licensed appropriately for positions, except as provided under R277-511;

C. document professional misconduct of other educators under the educators' direction as set forth in the law or this rule and take appropriate action based upon the misconduct. Such action shall include supervision or termination of employment when necessary to protect the physical or emotional well-being of students and employees and to protect the integrity of the profession, or both;

D. not personally falsify or direct another person to falsify records or applications of any type;

E. not recommend for employment in another district an educator who has been disciplined for unprofessional or unethical conduct or who has not met minimum professional standards in a current or previous assignment, consistent with Section 34-42-1;

F. adhere to the terms of a contract or assignment unless health or emergency issues requires vacating the contract or assignment. Persons shall in good faith comply with penalty provisions;

G. accept an educational employment assignment only if the educator has the appropriate certification required for that particular employment assignment except as provided for under R277-511 and shall provide only true and accurate pre-employment information or documentation;

H. recommend for employment or continuance of employment only persons who are licensed for the position; and

I. maintain confidentiality, consistent with the law, regarding students and colleagues.

J. act consistent with Section 67-16-1 through 14, Utah Public Employees Ethics Act.

R686-103-5. Competent Practices.

An educator shall:

A. adhere to federal and state laws, State Board of Education Administrative rules, local board policies and specific directives from supervisors regarding educational practices at school and school-related activities; and

B. exercise good judgment and prudence in the educator's personal life to avoid the impairment of the educator's professional effectiveness and respect the cultural values and standards of the community in which the educator practices.

R686-103-6. Competent Practice Related to Students.

An educator shall:

A. develop and follow objectives related to learning, organize instruction time consistent with those objectives, and adhere to prescribed subject matters and curriculum.

B. deal with each student in a just and considerate manner.

C. resolve disciplinary problems according to law and school board policy and local building procedures;

D. maintain confidentiality concerning a student unless a revelation of confidential information serves the best interest of the student and serves a lawful purpose;

E. not exclude a student from participating in any program, deny or grant any benefit to any student on the basis of race, color, creed, sex, national origin, marital status, political or religious beliefs, physical or mental conditions, family, social, or cultural background, or sexual orientation, and may not engage in a course of conduct that would encourage a student to develop a prejudice on these grounds or any others;

F. impart to students principles of good citizenship and societal responsibility by directed learning as well as by personal example;

G. cooperate in providing all relevant information and evidence to the proper authorities in the course of an investigation by a law enforcement agency or by Child Protective Services regarding criminal activity. However, an educator shall be entitled to decline to give evidence against himself in any such investigation if the same may tend to incriminate the educator as that term is defined by the Fifth Amendment of the U.S. Constitution;

H. take appropriate action to prevent student harassment;

I. follow appropriate instructions and protocols in administering standardized tests to students consistent with Section 53A-1-608; and

J. supervise students appropriately consistent with district policy and the age of the student.

R686-103-7. Moral and Ethical Conduct.

An educator shall:

A. not be convicted of domestic violence or abuse, including physical, sexual, and emotional abuse of any family member;

B. not be convicted of a stalking crime;

C. not use or distribute illegal drugs, or be convicted of any crime related to illegal drugs;

D. not be convicted of any illegal sexual conduct;

E. not attend school or school functions under the influence of illegal drugs or alcohol, or prescription drugs if the drug affects the educator's ability to perform regular activities;

F. not participate in sexual, physical, or emotional harassment or any combination toward any student or co-worker, nor knowingly allow harassment to continue;

G. not participate in inappropriate sexual contact with a student or minor;

H. not knowingly fail to protect a student from any condition detrimental to that student's physical health, mental health, safety, or learning;

I. not harass or discriminate against a student or co-worker on the basis of race, color, creed, sex, national origin, marital status, political or religious beliefs, physical or mental conditions, family, social, or cultural background, or sexual orientation;

J. not interfere with the legitimate exercise of political and civil rights and responsibilities of colleagues or a student acting consistently with law and district and school policies;

K. not threaten, coerce or discriminate against any fellow employee, regardless of employment classification, who reports or discloses to a governing agency actual or suspected violations of law, educational regulations, or standards;

L. conduct financial business with integrity by honestly accounting for all funds committed to the educator's charge and collect and report funds consistent with school and district policy;

M. not accept gifts or exploit a professional relationship for gain or advantage that might create the appearance of impropriety or that may impair professional judgment, consistent with Section 67-16-1 through 14, Utah Public Employees Ethics Act; and

N. not use or attempt to use district or school computers or information systems in violation of the district's acceptable use policy for employees or access information that may be detrimental to young people or inconsistent with the educator's role model responsibility.

O. avoid not only impropriety but also the appearance of impropriety in actions towards students and colleagues.

**KEY: disciplinary actions, educators[±]
~~January 5, 2001~~
 53A-6-306(1)(a)**



**Professional Practices Advisory
 Commission, Administration
 R686-104**

**Utah Professional Practices Advisory
 Commission Denial of License Due to
 Background Check Offenses**

NOTICE OF PROPOSED RULE

(New Rule)
 DAR FILE No.: 25222
 FILED: 09/03/2002, 17:55

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to provide procedures and an appeals process for an individual seeking a Utah educator license for the first time.

SUMMARY OF THE RULE OR CHANGE: This rule provides for submission of information, including the background check, evaluation of materials and an appeals process, if necessary.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-6-306(1)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There are no anticipated costs or savings to state budget. The Utah State Office of Education staff will carry out the process with existing budget.
- ❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. Licensing is a state process. There is no new background check requirement.
- ❖ OTHER PERSONS: There are no anticipated costs or savings to other persons. The rule merely formalizes the existing process.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The Utah State Office of Education staff will carry out the process with existing budget.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I

see no fiscal impact on businesses. Carol B. Lear, Executive Secretary

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

PROFESSIONAL PRACTICES ADVISORY
 COMMISSION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY UT 84111, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2002

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R686. Professional Practices Advisory Commission, Administration.

R686-104. Utah Professional Practices Advisory Commission Denial of License Due to Background Check Offenses.

R686-104-1. Definitions.

A. "Applicant" means an individual seeking a clearance of a criminal background check pursuant to approval for an educational license at any stage of the licensing process from the USOE.

B. "Board" means the Utah State Board of Education.

C. "Commission" means the Utah Professional Practices Advisory Commission as defined and authorized under Section 53A-6-301 et seq.

D. "Executive Committee" means a subcommittee of the Commission consisting of the Executive Secretary, Chair, Vice-Chair, and one member of the Commission at large. All Executive Committee members, excluding the Executive Secretary, shall be selected by the Commission. Substitutes may be appointed from within the Commission by the Executive Secretary as needed.

E. "Executive Secretary" means an employee of the Utah State Office of Education who is appointed by the State Superintendent of Public Instruction to serve as the executive officer, and a non-voting member, or UPPAC.

F. "License" means an authorization issued by the Board which permits the holder to serve in a professional capacity in a unit of the public education system or an accredited private school.

G. "USOE" means the Utah State Office of Education.

R686-104-2. Authority and Purpose.

A. This rule is authorized by Section 53A-6-306(1) which directs the Commission to adopt rules to carry out its responsibilities under the law and Section 53A-6-107 which directs the Board to carry out its responsibilities.

B. The purpose of this rule is to establish procedures for an applicant to proceed toward licensing when an application or recommendation for licensing identifies offenses in the applicant's criminal background check. The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63-46b-1(2)d).

R686-104-3. Initial Submission and Evaluation of Information.

A. Upon receipt of information as the result of a fingerprint check of all applicable state, regional, and national criminal records files pursuant to Section 53A-6-401, the Executive Secretary shall make a determination to approve the applicant's request for criminal background check clearance based on time passed since offense, violent nature of the offense (student safety), involvement or non-involvement of students or minors in the offense, or refer the application to the Commission for a decision and request further information and explanation from the applicant. The Executive Secretary may require the applicant to provide additional information, including:

(1) a letter of explanation for each offense reported to the Commission that details the circumstances, the final disposition, and any explanation for the offense the applicant may want to provide the Commission, including any advocacy for approving licensing.

(2) official documentation regarding each offense, including court records and police reports for each offense, or if both court records and police reports are not available, a letter on official police or court stationery from the appropriate court or police department involved, explaining why the records are not available.

B. The Commission shall only consider an applicant's licensing request after receipt of all letters of explanation and documentation requested in good faith by the Executive Secretary.

C. If an applicant is under court supervision of any kind, including parole, informal or formal probation or plea in abeyance, there is a presumption that the individual shall not be approved for licensing until the supervision is successfully terminated.

D. It is the applicant's sole responsibility to provide the requested material to the Commission.

E. Upon receipt of any requested documentation, including the applicant's written letters of explanation and advocacy, the Commission shall either approve the applicant's request for criminal background check clearance; deny the applicant's licensing request; or seek further information, personally from the applicant or other sources, at the first possible meeting of the Commission.

R686-104-3. Appeal.

A. Should the Commission deny an applicant's licensing request, the Commission shall inform the applicant in writing that the application for licensing has been denied and notify the applicant of the right to appeal that decision under this Rule.

B. The applicant shall have 30 days from notice provided under R686-104-3A to make formal written request for an appeal.

C. An applicant's request to appeal the denial of clearance shall follow the application criteria and format contained in R686-100-19(A)(1) and shall include:

- (1) name and address of the individual requesting review;
- (2) action being requested;
- (3) the grounds for the appeal, which are limited to:
 - (a) a mistake of identity;
 - (b) a mistake of fact regarding the information relied upon by the Commission in making its decision;

(c) information that could not, with reasonable diligence, have been discovered and produced by the applicant previously and provided previously to the Commission; or

(d) compelling circumstances that in the judgment of the Commission Executive Committee warrant an appeal.

(4) signature of person requesting review.

D. The Commission Executive Secretary shall make a determination regarding the grounds for appeal in a timely manner, inform the applicant in writing of the decision, and, if necessary, schedule an appeal hearing at the earliest possible date, consistent with the standard Commission meetings.

R686-104-4. Appeal Procedure.

A. An applicant shall have the right to be represented by an attorney at an appeal hearing under this Rule. The Commission shall be represented by a person appointed by the Investigations Unit of the USOE.

B. The burden of proof at an appeal hearing shall be on the applicant to show that the actions of the Commission in denying the applicant's licensing request were based on the grounds enumerated in R686-104-3C.

C. The hearing shall be heard before a panel (3 members) of the Commission or the Commission, chosen under the same procedures and having the same duties as delineated in R686-100-6.

D. The Commission Executive Secretary or Commissioner Chair shall conduct the hearing and act as hearing officer. The hearing officer's duties shall be the same duties as delineated in R686-100-6(A).

E. At the sole discretion of the hearing officer, the hearing shall be conducted under R686-100-7 through 14, as applicable. All procedural matters shall be at the sole discretion of the Executive Secretary who has the right to limit witnesses and evidence presented by the applicant in support of the appeal.

F. Within 20 days after the hearing, the Executive Secretary or Commission Chair shall issue a written report containing:

(1) detailed findings of fact related to the factual basis for the appeal;

(2) the decision and rationale of the hearing panel concerning the applicant's clearance of criminal background check request; and

(3) any time-line or conditions set by the panel for a reapplication for clearance by the applicant.

G. The decision of the hearing panel is final.

KEY: educator license, appeals

2002

53A-6-306(1)

53A-6-107

▼ ————— ▼

**Public Service Commission,
Administration
R746-400-5
Copies of Reports to Federal
Government Agencies**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 25210

FILED: 08/30/2002, 14:06

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To clarify the intended application of the rule, which was to place in rule form utility regulatory agencies' current information gathering practices.

SUMMARY OF THE RULE OR CHANGE: The last line of Section R746-400-5 is being changed to ensure that the Division of Public Utilities only obtains the reports it wants and that those reports are supplied according to requests and not automatically within 10 days of any federal filings.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 54-1-10, 54-3-2, 54-3-21, 54-3-22, 54-3-26, 54-4-16, 54-4-22, 54-5-1.5, 54-8b-2.5, 54-8b-10, 54-8b-15, 54-12-2, and 54-13-3

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: No change--the proposed amendment is only for clarification purposes.
- ❖ LOCAL GOVERNMENTS: None--the proposed rule does not affect any local government activity.
- ❖ OTHER PERSONS: This amendment may save some costs for unnecessary copy and mailing costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no additional compliance costs arising from the amended rule because the proposed amendment is only for clarification purposes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment is for clarification purposes and does not substantially change the rule. Therefore, there will be no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Barbara Stroud at the above address, by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at bstroud@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 10/16/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/17/2002

AUTHORIZED BY: Barbara Stroud, Paralegal

R746. Public Service Commission, Administration.**R746-400. Public Utility Reports.****R746-400-5. Copies of Reports to Federal Government Agencies.**

Upon request of the Division, each reporting entity shall provide the Division with a copy of any report filed with the following federal government agencies: Federal Energy Regulatory Commission, Federal Communications Commission, Rural Utility Services, Securities and Exchange Commission, and Surface Transportation Board. The reporting entity shall provide to the Division the requested reports within 10 days of receiving the Division's request [~~These requested copies shall be provided within 10 days of submission to the federal agency, if not otherwise required to be given to the Division~~].

KEY: public utilities, reports, rules and procedures

~~June 20,~~ 2002

54-2-1

54-8b-2

54-5-2

63-2-101



Tax Commission, Auditing

R865-6F-18

Corporations Exempt From the Franchise Tax Pursuant to Utah Code Ann. Section 59-7-105

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 25201

FILED: 08/28/2002, 14:51

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 58-7-101 requires the Tax Commission to promulgate rules to define the following terms for purposes of the farmers' cooperative corporate tax exemptions: "member", "producer", and "an association, corporation, or other organization of farmers or fruit growers". Section 59-7-102 provides exemptions from corporate tax.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment deletes language that is not in conformity with the current Section 59-7-102; defines the following terms (as required by 2002 S.B. 57) for purposes of the corporate tax exemption for farmers' cooperatives: "member", "producer", and "an association, corporation, or other organization of farmers or fruit growers"; and clarifies procedures a taxpayer must follow to claim an exemption from corporate tax. (DAR NOTE: S.B. 57 is found at UT L 2002 Ch 76, and was effective 03/15/2002.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-7-101 and 59-7-102

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any cost or savings was taken into account in 2002 S.B. 57.
- ❖ LOCAL GOVERNMENTS: None--Any cost or savings was taken into account in 2002 S.B. 57.
- ❖ OTHER PERSONS: None--Any cost or savings was taken into account in 2002 S.B. 57.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Proposed amendment defines terms consistent with federal terms - as required by 2002 S.B. 57 and clarifies procedures currently followed in order to claim a corporate tax exemption.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business as a result of this rule amendment.

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

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clec@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 10/15/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2002

AUTHORIZED BY: Pam Hendrickson, Commissioner

R865. Tax Commission, Auditing.

R865-6F. Franchise Tax.

R865-6F-18. [Corporations Exempt From The]Exemptions from Corporate Franchise and Income Tax Pursuant to Utah Code Ann. [Section 59-7-105]Sections 59-7-101 and 59-7-102.

[A. Corporations incorporated or qualified in Utah under the Nonprofit Corporation Act are taxable unless a valid Utah corporation franchise exemption is obtained. A corporation must be engaged in or organized to engage in one of the exempt categories provided in the Utah law in order to be eligible for exemption from Utah corporation franchise tax. In some instances, Utah exempt provisions are the same as those contained in federal law. Corporations that obtain a valid Utah exempt ruling are not required to file Utah corporation franchise tax returns (Form TC-20) nor pay Utah corporation franchise taxes, except as noted in Paragraph B, of this rule.

— B. Corporations which meet the requirements of Section 501(c), as amended, of the Internal Revenue Code are exempt from

the franchise tax. However, if an exempt corporation becomes subject to federal income tax, it must make a full disclosure of the items and amounts which have become subject to federal tax for a redetermination of its taxable status for Utah corporation franchise tax purposes.

— 1. The federal exempt ruling is used as the basis for determining Utah exemption, provided a copy of the ruling is submitted with a written request for Utah corporation franchise tax exemption.

— 2. The Tax Commission replies in writing to the written request.

— C. If Utah law provides for exemption but federal law does not, the Tax Commission makes an exception upon receipt of a written request from corporations such as:

— 1. Homeowner associations not organized for profit, which are organized to maintain or operate common areas or facilities. (Corporations such as time share, recreation property, and business property associations formed to maintain common areas are not exempt.)

— 2. Holding companies are generally exempt from Corporation Franchise Tax under the provisions of Utah Code Ann. Section 59-7-105(c). However, several conditions must be met before the exemption applies. These conditions are as follows:

— (a) Each of its subsidiary corporations required by Utah Code Ann. Section 59-7-102 to pay tax for the privilege of exercising its corporate franchise or for the privilege of doing business in the state must make the returns required by Utah Code Ann. Title 59, Chapter 7. For purposes of the foregoing, a corporation is a subsidiary of a second corporation if such second corporation owns, either directly or indirectly, more than 50 percent of the outstanding stock of any class of stock of the subsidiary and is entitled to vote in the election of directors of the subsidiary.

— (b) The activities of such corporation are limited so as to be only such as are incidental to the business of holding stock of other corporations for the purpose of controlling the management of affairs of such other corporations (the controlled corporation being referred to herein as subsidiary corporation). By way of illustration and not limitation, such activities may include the following:

— (1) acquiring and holding shares, stocks, debentures, debenture stock, bonds, obligations, and securities issued by its subsidiary corporations;

— (2) acquiring and holding stock and securities of another corporation for the purpose of acquiring control of such other corporation;

— (3) charging its subsidiary corporations management fees for furnishing management, accounting, and other services;

— (4) borrowing from and lending money to its subsidiary corporations, endorsing or otherwise guaranteeing obligations of its subsidiary corporations, and guaranteeing contractual or other performance obligations of its subsidiary corporations;

— (5) having interlocking directors and officers between such corporation and its subsidiary corporations;

— (6) monitoring and supervising the plans, methods, and operations of its subsidiary corporations;

— (7) retaining and temporarily investing funds held for purposes incident to the management of affairs of its subsidiary corporations; provided, however, that such investments are handled in a manner so that any net income derived from investment of such funds is allocated so as to be included for purposes of the Utah corporation franchise tax in the income of the subsidiary corporations;

—(8) the holding company may for its own use enter agreements concerning constructing, leasing, purchasing, holding, mortgaging or otherwise encumbering, and selling such real property as may be necessary or appropriate to the management of affairs of its subsidiary corporations; and

—(9) employing persons and owning, leasing, or otherwise holding such personal property as may be necessary or appropriate to the management of affairs of its subsidiary corporations.

—(c) The articles of association or incorporation of such corporation must limit the exercise of the corporation's franchise to those activities permitted under Paragraph C.2.b. of this rule.

—(d) Unless permitted under Paragraph C.2 of this rule, any holding company claiming to be exempt from the Utah corporation franchise tax shall not carry on or undertake any business, undertakings, transactions, or operation commonly carried on or undertaken by capitalists, promoters, financiers, contractors, merchants, commercial men, or agents; nor carry on or undertake any investment or insurance business, or any business of any kind.

—(e) The exemption applies only during that portion of a corporation's taxable year when these conditions are met. During any portion of its taxable year when a corporation does not meet all of the requirements, the corporation is subject to the tax imposed by Utah Code Ann. Section 59-7-102 based on such corporation's net income during the nonexempt portion of its taxable year. If a corporation, exempt for all or a portion of a taxable year, loses its exemption for such year, it may again be exempt by remedying the defect or defects and once again complying with all of the conditions and requirements. However, the exemption thus reestablished does not apply until the first day of the corporation's taxable year following the reestablishment of the exemption.

—(f) Proof of Exemption. In order to establish its exemption under Paragraph C, each corporation claiming exemption must file with the Tax Commission:

—(1) an affidavit showing the character of the corporation, the purpose for which it is organized, the nature of its activities, all of its subsidiary corporations and its subsidiary corporations which are subject to the Utah corporate franchise tax; and

—(2) a copy of its article of association or incorporation.

—(i) The foregoing filing must be made by what would otherwise be the due date of the corporation's franchise tax return for the first year for which exemption is claimed. When a corporation has established its right to exemption, it need not thereafter voluntarily make a return or any further showing with respect to its status unless it changes the character of its organization or operations from the purpose for which it is organized, or unless the Tax Commission requests the filing of returns or the furnishing of other information. Copies of supplemental or amended articles of association or incorporation should be forwarded promptly to the Tax Commission for study as to the effect upon exemption. The Tax Commission may, from time to time, require the corporation to file an affidavit, or a form which will reveal the corporation's current status.

—(g) This rule is not intended to in any way limit the authority and power of the Tax Commission (pursuant to Utah Code Ann. Section 59-7-113) to distribute, apportion, or allocate gross income or deductions between or among the corporations specified in Utah Code Ann. Section 59-7-113, if the Tax Commission determines that

such distribution, apportionment or allocation is necessary in order to prevent evasion of Utah corporate franchise taxes or to clearly reflect the Utah taxable income of any of such corporations. If the Tax Commission determines, as part of its exercise of the foregoing power, that the deduction for an intercompany transfer is unreasonable in nature or amount, the Tax Commission may deny a deduction for the unreasonable portion in order to prevent evasion of Utah corporate franchise taxes or clearly reflect the Utah taxable income of the transfer corporation. Furthermore, this rule in no way prohibits the Tax Commission from determining if a holding company is conducting a unitary business with any or all of its subsidiaries for the purpose of determining the amount of net income attributable to Utah from the entire unitary business operations. Exercise by the Tax Commission of its authority and power contained in this paragraph is not evidence that the corporation has failed to meet all of the requirements of this section.

—3. Insurance companies which are required to pay Utah insurance premium taxes are exempt from corporation franchise tax requirements. Insurance companies that are exempt from payment of Utah insurance premium taxes or who have qualified as a Utah Corporation, but have not commenced doing business in Utah, are subject to the corporation franchise tax requirements including the minimum tax provisions.]A. The following definitions apply to the exemption for corporate franchise and income tax for a farmers' cooperative.

1. "Member" means a person who shares in the profits of a cooperative association and is entitled to participate in the management of the association.

2. "Producer" means a person who, as owner or tenant, bears the risk of production and receives income based on farm production rather than fixed compensation.

B. In order to claim an exemption from corporate franchise and income tax provided for by Section 59-7-102, a corporation must submit to the Tax Commission form TC-161, Utah Registration for Exemption from Corporate Franchise or Income Tax, along with any information that form requires, for the Tax Commission's determination that the corporation satisfies the requirements of Section 59-7-102.

C. A corporation shall notify the Tax Commission of any change that affects its tax exempt status under Section 59-7-102.

D. For purposes of the Section 59-7-102 exemption for a farmers' cooperative, an association, corporation, or other organization similar to an association, corporation, or other organization of farmers or fruit growers includes establishments primarily engaged in growing crops, raising animals, harvesting timber, and harvesting fish and other animals from a farm, ranch, or their natural habitat.

KEY: taxation, franchises, historic preservation, trucking industries

May 17, 2002

59-7-101

59-7-102



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).

Commerce, Securities **R164-13** Definitions

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25199
FILED: 08/27/2002, 11:30

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 61-1-13 defines terms used in the Securities Act. Subsection 61-1-13(27) provides that terms not defined in Section 61-1-13 shall have the meaning established by the division in rule, or in the absence of a rule, the meaning accepted in the business community. Section 61-1-24 allows the Division to make rules when necessary to carry out the provision of the Securities Act.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R164-13 definitions serve to clarify phrases used in the Securities Act assisting the public in complying with the statute and should be continued.

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

COMMERCE
SECURITIES
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:

Paula Faerber at the above address, by phone at 801-530-6976, by FAX at 801-530-6980, or by Internet E-mail at pfaerber@utah.gov

AUTHORIZED BY: Paula Faerber, Staff Attorney

EFFECTIVE: 08/27/2002



Commerce, Securities **R164-15** Federal Covered Securities

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25215
FILED: 09/01/2002, 11:50

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: Section 61-1-15.5 governs federal covered securities and states that the Division may, by rule or order, require filing of documents relating to federal covered securities. Section 61-1-24 allows the division to make rules when necessary to carry out provisions of 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: No comments have been received for 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 clarifies the notice filing requirements set forth in Section 61-1-15.5 and insures that the Division gets notice of federal covered securities offered in this state.

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

COMMERCE
SECURITIES
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:

Paula Faerber at the above address, by phone at 801-530-6976, by FAX at 801-530-6980, or by Internet E-mail at pfaerber@utah.gov

AUTHORIZED BY: Paula Faerber, Staff Attorney

EFFECTIVE: 09/01/2002

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

COMMUNITY AND ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT, FINE ARTS
617 E SOUTH TEMPLE
SALT LAKE CITY UT 84102-1177, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jennifer Broschinsky at the above address, by phone at 801-236-7548, by FAX at 801-236-7556, or by Internet E-mail at jbroshinsky@utah.gov

AUTHORIZED BY: Bonnie Stephens, Director

EFFECTIVE: 08/20/2002

Community and Economic
Development, Community
Development, Fine Arts

R207-1

Utah Arts Council General Program
Rules

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

DAR FILE No.: 25188
FILED: 08/20/2002, 16:04

**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: Subsection 9-6-205(1)(a) authorizes the board to "make, amend, or revoke rules for the conduct of its business in governing the institute and 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: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Agency mission, which directly relates to the rule, is ongoing; and the rule should be continued.

Community and Economic
Development, Community
Development, Fine Arts

R207-2

Policy for Commissions, Purchases,
and Donations to, and Loans from, the
Utah State Art Collections

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

DAR FILE No.: 25189
FILED: 08/20/2002, 16:09

**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 9-6-205(1)(a) authorizes the board to "make, amend, or revoke rules for the conduct of its business in governing the institute and 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: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Agency mission, which directly relates to the rule, is ongoing; and the rule should be continued.

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

COMMUNITY AND ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT, FINE ARTS
617 E SOUTH TEMPLE
SALT LAKE CITY UT 84102-1177, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jennifer Broschinsky at the above address, by phone at 801-236-7548, by FAX at 801-236-7556, or by Internet E-mail at jbroshinsky@utah.gov

AUTHORIZED BY: Bonnie Stephens, Director

EFFECTIVE: 08/20/2002

Governor, Administration

R355-1

Records Access and Management

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

DAR FILE NO.: 25217
FILED: 09/03/2002, 15:56

**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 establishes procedures by which the public can obtain access to records and information which is classified in accordance with the Government Records Access and Management Act (GRAMA), as required by Subsections 63-2-204(2), 63-2-904(2), and Section 63-46a-3.

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 that directly address the provisions of this rule, have been received during and 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: Since GRAMA continues in force, this office needs to respond to requests for access to public records/information. This rule provides that requests shall be submitted to that office/area normally providing such data. For example, demographic/planning data requests shall be submitted to the Governor's Office of Planning and Budget.

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

GOVERNOR
ADMINISTRATION

Room 210 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:

Kent Bishop at the above address, by phone at 801-538-1564, by FAX at 801-538-1547, or by Internet E-mail at kbishop@utah.gov

AUTHORIZED BY: Kent Bishop, Rules Analyst

EFFECTIVE: 09/03/2002

Governor, Planning and Budget, Chief
Information Officer

R365-3

Computer Software Licensing,
Copyright, Control, Retention, and
Transfer

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

DAR FILE NO.: 25173
FILED: 08/19/2002, 15:51

**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 issued by the Chief Information Officer under the authority of Section 63D-1-301.5 of the Information Technology Act, and in accordance with Section 63-46a-3 of the Utah Rulemaking Act.

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 in favor of the rule have indicated that it clarifies and standardizes how the state will handle software that is owned by third party and software makers and provides support for the state in its efforts to ensure that all software running on state computers are appropriately licensed and that there are control mechanisms in place to prevent and discourage unlawful activities by employees who are responsible for the installation, maintenance, and removal of third party software.

It also clarifies and provides a mechanism for the transfer of software that is the intellectual property of the state of Utah. Supporters have expressed appreciation for the creation of a model software transfer agreement and a review of this agreement by the Attorney General's Office. A few comments have been received from state agencies (not the software vendor community) that question the need for a statewide policy and prefer to use their own individual practices.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule has been revised and updated at least twice over the last few years and continues to be valid. Knowledge of software licensing and control of software licenses is a specialized skill. Some licensing by major software vendors is exceedingly complex. As a result errors can occur. As this rule has evolved, it was felt there is a need to establish a software controller function that will "beef up" the control function through periodic audits. Although the agency has primary responsibility for compliance with this rule, standardizing on it provides a "floor" for agencies to follow. Also, if staff transfer across state agencies they are more likely to experience common practices requiring a lower investment in re-training.

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

GOVERNOR
 PLANNING AND BUDGET,
 CHIEF INFORMATION OFFICER
 Room 116 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:

Al Sherwood at the above address, by phone at 801-538-1195, by FAX at 801-538-1547, or by Internet E-mail at asherwood@utah.gov

AUTHORIZED BY: Phillip Windley, Chief Information Officer

EFFECTIVE: 08/19/2002

Health, Administration
R380-1

Petitions for Department Declaratory Orders

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25204
 FILED: 08/30/2002, 10:15

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 required by Section 63-46b-21, which requires agencies to have rules governing petitions for declaratory orders. It is also authorized by Subsection 26-1-5(3) and Section 26-1-17.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS

SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides the procedures for the submission, review, and disposition of petitions for agency declaratory orders on the applicability of statutes administered by the Department, rules promulgated by the Department, or any of its committees having statutory authority to make rules, and orders issued by the Department and should be continued.

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

HEALTH
 ADMINISTRATION
 CANNON HEALTH BLDG
 288 N 1460 W
 SALT LAKE CITY UT 84116-3231, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Doug Springmeyer at the above address, by phone at 801-538-6971, by FAX at 801-538-6306, or by Internet E-mail at dspringm@utah.gov

AUTHORIZED BY: Rod Betit, Executive Director

EFFECTIVE: 08/30/2002

Health, Administration
R380-5

Petitions for Declaratory Orders on Orders Issued by Committees

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25205
 FILED: 08/30/2002, 10:17

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: This rule is required by Section 63-46b-21, which requires agencies to have rules governing petitions for declaratory orders. It is also authorized by Subsection 26-1-5(3) and Section 26-1-17.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS

IN OPPOSITION TO THE RULE, IF ANY: This rule provides the procedures for the submission, review, and disposition of petitions for agency declaratory orders concerning orders issued by committees having statutory authority to issue orders and should be continued.

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

HEALTH
ADMINISTRATION
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Doug Springmeyer at the above address, by phone at 801-538-6971, by FAX at 801-538-6306, or by Internet E-mail at dspringm@utah.gov

AUTHORIZED BY: Rod Betit, Executive Director

EFFECTIVE: 08/30/2002



Health, Administration
R380-10
Informal Adjudicative Proceedings

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

DAR FILE No.: 25206
FILED: 08/30/2002, 10:20

**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: Title 63, Chapter 46b, provides that agencies may promulgate rules governing the administrative actions brought before the agency. This rule is also authorized by Sections 26-1-5, 26-1-17, and 26-1-24 which provide that the Department of Health may promulgate rules governing the administration 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: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides agency-specific informal adjudicative procedures for the Department of Health and committees created within the Department under Section 26-1-7 and should be continued.

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

HEALTH
ADMINISTRATION
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Doug Springmeyer at the above address, by phone at 801-538-6971, by FAX at 801-538-6306, or by Internet E-mail at dspringm@utah.gov

AUTHORIZED BY: Rod Betit, Executive Director

EFFECTIVE: 08/30/2002



Health, Administration
R380-100
Americans with Disabilities Act
Grievance Procedures

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

DAR FILE No.: 25207
FILED: 08/30/2002, 10:23

**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 required by 28 CFR 35.107 because the Utah Department of Health, as a public entity that employs more than 50 persons, must adopt and publish grievance procedures for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act of 1990 and 28 CFR Part 35.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is required by the provisions of 28 CFR 35.107 and implements the requirements of Title II of the Americans with Disabilities Act of 1990, which provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the Department of Health; and should be continued.

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

HEALTH
ADMINISTRATION
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Doug Springmeyer at the above address, by phone at 801-538-6971, by FAX at 801-538-6306, or by Internet E-mail at dspringm@utah.gov

AUTHORIZED BY: Rod Betit, Executive Director

EFFECTIVE: 08/30/2002

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 part of the legal foundation for a core public health function, detection, investigation, and control/prevention of communicable and other diseases. It needs to be renewed to allow those functions to continue. No comments have been received that would suggest otherwise.

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

HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES,
EPIDEMIOLOGY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Robert Rolfs at the above address, by phone at 801-538-6386, by FAX at 801-538-6694, or by Internet E-mail at rrolfs@utah.gov

AUTHORIZED BY: Rod Betit, Executive Director

EFFECTIVE: 08/20/2002

▼ ————— ▼

Health, Epidemiology and Laboratory Services, Epidemiology **R386-702** Communicable Disease Rule

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25183
FILED: 08/20/2002, 11:07

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: The Communicable Disease Rule is adopted under authority of Sections 26-1-30 and 26-6-3. In Section 26-6-3, the department is given "authority to investigate and control the causes of epidemic infections and communicable disease", and instructed to "provide for the detection, reporting, prevention, and control of communicable diseases and epidemic infections or any other health hazard which may affect the public health." This rule was intended to implement that statutory instruction.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: A hearing was held 8/31/1999 to solicit comment regarding an amendment. Only one comment was made (in support of the amendment to make Creutzfeldt-Jacob disease reportable). For this five-year review, we solicited comment regarding both the continuation of the rule and on ways to improve it in the future. To date we have received seven comments in response to that request and two comments that coincidentally came in during that time. All comments were suggestions to improve the rule (e.g., wording changes, addition of diseases to report, strengthening the requirement for physician reporting).

▼ ————— ▼

Health, Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health **R388-801** AIDS Testing and Reporting for Emergency Medical Services Providers Rule

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25184
FILED: 08/20/2002, 11:29

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: This rule establishes procedures for patient testing and reporting following a significant exposure of an emergency medical services provider to HIV in a pre-hospital emergency situation. This rule is established under the authority of Section 26-6a-9.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Approximately 150

individuals involved with HIV treatment, care and prevention, and emergency medical services (EMS) were asked to provide written comment on this rule. A summary of the comments are as follows: 1) one individual suggested that the rule be modified to clarify that next-of-kin may only give consent for testing (Section R388-801-4) when a medical power of attorney exists (USPHS Guidelines, MMWR 2001; 50 (no. RR-11):1-45; 2) one individual suggested that the rule be amended to include Hepatitis C testing for the source patient, change the emphasis from testing of the source patient to treatment of the exposed EMS worker, add the medical provider who is treating the EMS worker to the list of individuals who may receive test results, and add references or recommendations about post-exposure prophylaxis; and 3) two individuals submitted written remarks in the same letter, requesting the addition of Hepatitis C testing, change the definition of significant exposure to emphasize body fluids known to transmit disease (as opposed to listing the body fluids by name). These individuals also expressed a strong desire to re-direct EMS workers toward seeking medical intervention upon exposure and mandate in-person reporting of the exposed individual prior to testing a source case (Section R388-801-3). Including the physicians caring for exposed EMS workers, who are under contract with the employing agency as a designated agent was requested (Section R388-801-4). Additional questions were asked about care for individuals who are not transported to a receiving medical facility. These individuals also found Section R388-801-6 confusing and not current with current stands of practice for determining exposure significance. Finally, concern was raised over Section R388-801-7 and next-of-kin consenting for a deceased individual. Their final recommendation is to change the focus of the entire rule to handle these exposures under the same standard of practice as other health care providers, regardless of practice setting.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as its purpose is to provide instructions to EMS employers, workers, hospitals, emergency rooms, and treating physicians regarding exposure to blood borne pathogens in pre-hospital situations. Additionally, it provides confidentiality protections for individuals who may have exposed an EMS worker. The agency does not disagree with any of the written comments received to date, there were no comments submitted in opposition to this rule.

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

HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES;
HIV/AIDS,
TUBERCULOSIS CONTROL/REFUGEE HEALTH
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:
Teresa Garrett at the above address, by phone at 801-538-

6246, by FAX at 801-538-9913, or by Internet E-mail at teresagarrett@utah.gov

AUTHORIZED BY: Rod Betit, Executive Director

EFFECTIVE: 08/20/2002

▼ ————— ▼

Health, Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health

R388-802

HIV Positive Student or School Employee Rule

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25185
FILED: 08/20/2002, 11:38

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 establishes standards relating to HIV infection in the schools in order to reduce the risk to susceptible individuals and to protect infected individuals against both unreasonable health risks and unnecessary restrictions in activities and associations. This rule is authorized by Section 26-1-30.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Approximately 150 individuals involved with HIV treatment, care, and prevention were asked to provide written comment on this rule. A summary of the comments are as follows: 1) one individual questioned the need to require reporting of HIV status to schools; 2) one individual noted that sharing HIV infection status is not pertinent unless the student is involved with sex, injecting drug use, or blood sharing/rituals. This individual also made several references to practices outlined in the rule that are out-of-date and not current with present standards of care; 3) another individual questioned if the Department of Health was pushing the limits of confidentiality at Section R388-802-3; and 4) two individuals wrote together to request that the rule be allowed to expire, as guidelines provided by the Centers for Disease Control and Prevention and the Occupational Safety and Health Administration provided clear standards of care for preventing transmission of blood-borne pathogens.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as its purpose is to provide instructions to school administrators in protecting the rights of individuals who attend

schools or are employed by them. The intent of the rule is to ensure that individuals with the HIV infection are protected from untoward health-related risks, and allowed to remain free from unnecessary or excessive limitations on activities and associations. The rule does not require that HIV status be reported, in merely provides instructions for administrators to follow in the event that the administrator is notified of a student or employee who is HIV positive.

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

HEALTH
 EPIDEMIOLOGY AND LABORATORY SERVICES;
 HIV/AIDS,
 TUBERCULOSIS CONTROL/REFUGEE HEALTH
 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:
 Teresa Garrett at the above address, by phone at 801-538-6246, by FAX at 801-538-9913, or by Internet E-mail at teresagarrett@utah.gov

AUTHORIZED BY: Rod Betit, Executive Director

EFFECTIVE: 08/20/2002



Health, Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health

R388-803

HIV Test Reporting

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25181
 FILED: 08/20/2002, 10:38

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: Authority for this rule is established in Sections 26-6-3 and 26-6-3.5 of the Utah Communicable Disease Control Act. This rule, as authorized by statute, establishes requirements for: reporting, screening, diagnostic, and treatment test results to Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS).

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 comment/question was received which stated: "If reporting is made to a local health department, is there a mechanism for that information

to get to the state?" If there are such provisions, it is not clear in 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 is authorized or mandated by state law, and implements, or interprets Sections 26-6-3 and 26-6-3.5 of the Utah Communicable Disease Control Act. The rule is worded in such a way as to give laboratories, providers, or other reporting sources the option of reporting to either the local health department or the Utah Department of Health and should be continued. Clear mechanisms are in place that require local health departments to report morbidity and positive HIV test results to the Utah Department of Health.

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

HEALTH
 EPIDEMIOLOGY AND LABORATORY SERVICES;
 HIV/AIDS,
 TUBERCULOSIS CONTROL/REFUGEE HEALTH
 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:
 Teresa Garrett at the above address, by phone at 801-538-6246, by FAX at 801-538-9913, or by Internet E-mail at teresagarrett@utah.gov

AUTHORIZED BY: Rod Betit, Executive Director

EFFECTIVE: 08/20/2002



Health, Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health

R388-804

Special Measures for the Control of Tuberculosis

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25182
 FILED: 08/20/2002, 10:44

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: This rule establishes standards for the control and prevention of tuberculosis as required by Sections 26-6-4, 26-6-6, 26-6-7, 26-6-8, and 26-6-9 of the Utah Communicable Disease Control Act; and Title

26, Chapter 6b, Communicable Diseases - Treatment, Isolation, and Quarantine Procedures.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Approximately 250 individuals directly involved with tuberculosis (TB) control activities in Utah were asked to submit written comments on the TB rule. A summary of the comments are as follows: 1) the first individual suggested that "isolation" be defined, and that "private physicians" be changed to "licensed medical practitioners or health care providers". This person also went on to reword the definition for who should be targeted for screening efforts. This person's final comment focused on rewording the sentence on Occupational Safety and Health Administration (OSHA) guidelines; 2) the second individual suggested a change to the definition of "infectious or communicable tuberculosis". This person also commented that the American Tuberculosis Society will soon be coming out with a statement on a blood test for TB; 3) the third individual said "the Rule for TB Control looks fine to me."; and 4) the fourth individual suggested a different numbering format for several sections and questioned the definition of the department name.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule should be continued as its purpose is to focus efforts of tuberculosis control on disease elimination. Furthermore, the standards outlined constitute the minimum expectations in the care and treatment of individuals diagnosed with, suspected to have, or exposed to tuberculosis. None of the comments submitted were in opposition to the rule. The comments submitted will be considered the next time revisions to the rule are proposed.

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

HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES;
HIV/AIDS,
TUBERCULOSIS CONTROL/REFUGEE HEALTH
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:
Teresa Garrett at the above address, by phone at 801-538-6246, by FAX at 801-538-9913, or by Internet E-mail at teresagarrett@utah.gov

AUTHORIZED BY: Rod Betit, Executive Director

EFFECTIVE: 08/20/2002



School and Institutional Trust Lands, Administration **R850-100** Trust Land Management Planning

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25169
FILED: 08/16/2002, 09:45

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 53-2-201 require that planning procedures be developed to allow for appropriate management of trust land assets.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The School and Institutional Trust Lands Administration manages a vast surface and mineral estate for the benefit of the trust beneficiaries. Statute specifically requires rules that describe the degree of planning necessary for each category of activity on the trust lands and the manner in which that planning will be carried out in order to insure that the interests of the beneficiaries are paramount.

This rule provides those planning guidelines 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: 08/16/2002



Tax Commission, Auditing
R865-25X
Brine Shrimp Royalty

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

DAR FILE No.: 25197
FILED: 08/26/2002, 13:04

**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: Section 59-23-4 requires the commission to annually determine the value of unprocessed brine shrimp eggs in accordance with a valuation methodology established by the commission in rule.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R865-25X defines terms, establishes a valuation methodology for unprocessed brine shrimp eggs, and indicates the information necessary for the commission to value the unprocessed brine shrimp eggs and should be continued.

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

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

AUTHORIZED BY: Pam Hendrickson, Commissioner

EFFECTIVE: 08/26/2002



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

NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

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. The extension permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed extensions for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date. The five-year review extension is governed by *Utah Code* Subsection 63-46a-9(4) and (5) (1996).

Governor

Planning and Budget, Chief Information Officer

No. 25193 (filed 08/20/2002 at 5:24 p.m.): R365-4. Information Technology Security.

Enacted or Last Five-Year Review: 09/18/97 (No. 19942, 5YR, filed 09/18/97 at 3:59 p.m., published 10/15/97)

Extended Due Date: 01/16/2003

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 25192 (filed 08/20/2002 at 5:21 p.m.): R414-13. Psychology Services.

Enacted or Last Five-Year Review: 09/08/97 (No. 19850, 5YR, filed 09/08/97 at 3:00 p.m., published 10/01/97)

Extended Due Date: 01/06/2003

Human Services

Administration, Administrative Services, Licensing

No. 25211 (filed 08/30/2002 at 5:23 p.m.): R501-1. General Provisions.

Enacted or Last Five-Year Review: 09/02/97 (No. 19823, 5YR, filed 09/02/97 at 11:12 a.m., published 09/15/97)

Extended Due Date: 12/31/2002

No. 25212 (filed 08/30/2002 at 5:25 p.m.): R501-2. Core Standards.

Enacted or Last Five-Year Review: 09/02/97 (No. 19824, 5YR, filed 09/02/97 at 11:14 a.m., published 09/15/97)

Extended Due Date: 12/31/2002

No. 25213 (filed 08/30/2002 at 5:28 p.m.): R501-7. Rules for Child Placing Agencies.

Enacted or Last Five-Year Review: 09/02/97 (No. 19825, 5YR, filed 09/02/97 at 12:20 p.m., published 09/15/97)

Extended Due Date: 12/31/2002

No. 25214 (filed 08/30/2002 at 5:30 p.m.): R501-11. Categorical Standards.

Enacted or Last Five-Year Review: 09/02/97 (No. 19826, 5YR, filed 09/02/97 at 12:30 p.m., published 09/15/97)

Extended Due Date: 12/31/2002

End of the Notices of Five-Year Review Extensions 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).

Financial Institutions

Consumer Credit

No. 25208: R335-3. Rule Interpreting Section 70C-3-101(2)(c) and Specifying Certain Related Disclosure Requirements.
Enacted or Last Five-Year Review: 08/29/97 (No. 19816, Filed 08/29/97 at 4:27 p.m., Published 09/15/97)
Expired: 08/29/2002

End of the Notices of Expired Rules Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Commerce

Occupational and Professional Licensing
No. 25052 (AMD): R156-37. Utah Controlled Substance Act Rules.
Published: July 15, 2002
Effective: August 19, 2002

Real Estate

No. 24927 (AMD): R162-4. Office Procedures - Real Estate Principal Brokerage.
Published: July 1, 2002
Effective: August 21, 2002

No. 25020 (AMD): R162-6. Licensee Conduct.
Published: July 15, 2002
Effective: August 21, 2002

Environmental Quality

Radiation Control
No. 24717 (AMD): R313-70-7. License Categories and Types of Fees for Radioactive Materials Licenses.
Published: May 1, 2002
Effective: August 28, 2002

Health

Epidemiology and Laboratory Services, Environmental Services
No. 24728 (CPR): R392-100. Food Service Sanitation.
Published: July 15, 2002
Effective: September 3, 2002

Insurance

Administration
No. 24597 (CPR): R590-131. Accident and Health Coordination of Benefits Rule.
Published: July 1, 2002
Effective: August 22, 2002

Public Safety

Driver License
No. 25059 (AMD): R708-7. Functional Ability in Driving: Guidelines for Physicians.
Published: July 15, 2002
Effective: August 20, 2002

Transportation

Operations, Maintenance
No. 25053 (NEW): R918-2. Widening Pavement to Curb and Gutter.
Published: July 15, 2002
Effective: August 19, 2002

Workforce Services

Employment Development
No. 25050 (AMD): R986-700-702. General Provisions.
Published: July 15, 2002
Effective: September 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 September 3, 2002, the effective dates of which are no later than September 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* is printed in this *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/>).
