

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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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.

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EDITOR'S NOTES

NOTICE OF A PUBLICATION ERROR IN THE MARCH 15, 2003, ISSUE OF THE UTAH STATE BULLETIN

An amendment to Rule R162-106 was published under DAR No. 26060 in the March 15, 2003, issue of the *Utah State Bulletin*. The amendment affected Sections R162-106-3 and R162-106-7. Due to a processing error, the marked change in Section R162-106-7 was dropped and was not published. The rule analysis published in the March 15, 2003, Bulletin clearly indicates the reason for and content of the changes in the rule. The full correct text of the amended Section R162-106-7 is reproduced below:

R162. Commerce, Real Estate.

R162-106. Professional Conduct.

R162-106-7. Sales and Listing History.

In order to comply with Standard 1 of the Uniform Standards of Professional Appraisal Practice (USPAP), appraisers who are licensed or certified under this chapter shall analyze the listing history of the subject property for the [year]three years preceding the appraisal if such information is available to the appraiser from a multiple listing service, listing agent(s), or the property owner.

KEY: real estate appraisals, conduct

~~November 15, 2001~~**2003**

Notice of Continuation March 27, 2002

61-2b-27

Comment on this change will be accepted by the Real Estate Division no later than 5:00 p.m. on 04/14/2003. Direct questions regarding this rule to: Shelley Wismer at the Division of Real Estate, Heber M Wells Bldg, 160 E 300 S, Salt Lake City, UT 84111-2316, or by phone at 801-530-6761, or by FAX at 801-530-6749, or by Internet E-mail at swismer@utah.gov

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.

NOTICE OF PUBLICATION ERRORS IN THE FEBRUARY 15, 2003; MARCH 1, 2003; AND THE MARCH 15, 2003; ISSUES OF THE UTAH STATE BULLETIN

In the February 15, 2003, issue of the *Utah State Bulletin* (2003-4), an effective date for Rule R671-201 (DAR No. 25627) was published as January 29, 2003. The Notice of Effective Date was filed by mistake as this amendment to R671-201 was supposed to lapse. The Notice of Effective Date for this filing is invalid because it purports to make amendments effective to language that does not exist in the rule. This notice invalidates the Notice of Effective Date.

The following errors relate to retroactive dates that were inadvertently filed.

In the March 1, 2003, issue of the *Utah State Bulletin* (2003-5), an effective date for Rule R655-7 (DAR No. 25550) was published as February 1, 2003. The correct date for R655-7 is February 10, 2003.

In the March 15, 2003, issue of the *Utah State Bulletin* (2003-6), an effective date for R657-23 (DAR No. 25890) was published as February 15, 2003. The correct date for R657-23 is February 16, 2003.

The corrected notices appear on the NOTICES OF RULE EFFECTIVE DATES page in this issue.

If you have any questions regarding this correction, please contact Nancy Lancaster, Publications Editor, Division of Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007, phone: (801) 538-3218, FAX: (801) 538-1773, or Internet E-mail: nllancaster@utah.gov.

LEGISLATION WHICH AFFECTS RULEMAKING

The 55th Legislature's 2003 General Session ended on March 5, 2003. During the session, two bills passed that affect administrative rules in general.

H.B. 45 "Reauthorization of Administrative Rules" by Rep. David Ure (R)

This is the Administrative Rules Review Committee's annual bill that is required by Section 63-46a-11.5. The long title of H.B. 45 indicates that the bill ". . . reauthorizes all state agency administrative rules."

As of March 18, 2003, Legislative Research and General Counsel is in the process of enrolling the bill. After it is enrolled, the bill will be sent to the Governor for his signature. The bill provides for an effective date of May 1, 2003, and will go into effect that day pending the Governor's action. A copy of the introduced bill is published in this issue of the Bulletin.

S.B. 30 "Utah Administrative Rulemaking Act Amendments" by Sen. Howard Stephenson (R)

This is a bill recommended by the Administrative Rules Review Committee. The committee's intent is to clarify the rulemaking process, making it clear to agencies that it doesn't matter what a document is called, if it meets the definition of a rule, it is a rule. It is enforceable as a rule only if it is promulgated in accordance with the process required in the rulemaking act.

S.B. 30 changes the rulemaking act in several ways. It deletes the definition of "Policy". It modifies the definition of "Rule" and modifies exclusions. It adds Section 63-46a-3.5 that provides, "An agency's written statement is a rule if it conforms to a definition of a rule under Section 63-46a-2, but the written statement is not enforceable unless it is made as a rule in accordance with the requirements of this chapter."

As of March 18, 2003, Legislative Research and General Counsel is in the process of enrolling the bill. After it is enrolled, the bill will be sent to the Governor for his signature. The bill will go into effect on May 5, 2003, pending the Governor's action. A copy of the introduced bill is published in this issue of the Bulletin.

Additional Information

Information about legislation related to rulemaking is available on the Internet at: <http://www.rules.utah.gov/law/legis.htm> . Additional information about the 2003 General Session and specific legislation is available from the Legislature's Office of Legislative Research and General Counsel at: <http://www.le.state.ut.us/~2003/2003.htm> . The Legislature's home page can be found at: <http://le.utah.gov/> .

Questions about this legislation may be directed to Ken Hansen, Director, Division of Administrative Rules, 4120 State Office Building, Salt Lake City, UT 84114-1201, phone: 801-538-3777, FAX: 801-538-1773, or Internet E-mail: khansen@utah.gov

End of the Editor's Notes Section

SPECIAL NOTICES

HEALTH HEALTH CARE FINANCING

PUBLIC NOTICE OF APPLICATION FOR A SECTION 1115 RESEARCH AND DEMONSTRATION PROJECT

The Division of Health Care Financing, Utah Department of Health, is submitting a proposal for a Section 1115 Research and Demonstration Project to the Centers for Medicare and Medicaid Services. The proposal is to implement a model Children's Hospice International *Program of All-Inclusive Care for Children with life-threatening conditions and their families* (PACC, a registered trademark). Implementation is proposed to begin July 2003 for a five-year period. The proposal may be reviewed in person at the office of the Division of Health Care Financing, Cannon Health Building, 288 N 1460 W, Salt Lake City, UT. Contact Karen Aubrey at (801) 538-6707 for further information.

Program Title/Cost Neutrality

The Utah program is called "Promoting Hospice and Optimal Palliative Efforts for Utah Children" or "Promoting HOPE." The program will offer an array of support services to the family of a child with a life-threatening condition that will supplement the child's Medicaid or other health insurance coverage. The program must remain budget neutral under the conditions of Section 1115 research and demonstration model.

Population Served/Services Offered

Children up to age 18 diagnosed with a life-threatening medical condition so serious it is unlikely the child will survive childhood, as determined by the treating physician, will be eligible for the Promoting HOPE program. All families whose children are referred to the program will receive information and referral and may receive other supportive services to supplement their primary insurance coverage including Case Management, Palliative Care Consultation, Nursing and Other Therapeutic/Palliative Care, Counseling and Expressive Therapies, Ancillary Support/Family Choice Support, Traditional Respite/Family Choice Respite, Medical Supplies and Equipment, Pharmacy, and Transportation support. In the first year, the program will be open only to children with life-threatening conditions who are also eligible for Medicaid. In following years, children who are not eligible for Medicaid but who have private insurance may also enroll after the payment of a sliding fee based upon the family size and income.

For more information or to make public comment about the proposal and the Promoting HOPE for Utah Children, contact the Zohreh Saunders, Project Director, Promoting HOPE for Utah Children, Division of Healthcare Financing at: (801) 538-9227 or by E-mail at: zsaunders@utah.gov.

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 March 1, 2003, 12:00 a.m., and March 14, 2003, 11:59 p.m. are included in this, the April 1, 2003, 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 May 1, 2003. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through July 30, 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.

**Agriculture and Food, Marketing and
Conservation
R65-7
Horse Racing**

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26083
FILED: 03/11/2003, 09:39

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment clarifies the intent of the rule.

SUMMARY OF THE RULE OR CHANGE: This amendment includes in Section R65-7-3 the hours the commission has jurisdiction of a race meet. Changes in Section R65-7-13 require the stewards to have a list of the approved medications.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-38-4

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** No cost to state budget. The changes of this rule are notification of jurisdiction and who is responsible for maintaining the list of approved medication.

❖ **LOCAL GOVERNMENTS:** No cost to local government. The changes of this rule are notification of jurisdiction and who is responsible for maintaining the list of approved medication.

❖ **OTHER PERSONS:** No cost to other persons. The purpose of the changes is for clarification only.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The purpose of the changes is for clarification only, therefore there is no compliance cost.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no impact on business. The purpose of the changes is for clarification only.

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

AGRICULTURE AND FOOD
MARKETING AND CONSERVATION
350 N REDWOOD RD
SALT LAKE CITY UT 84116-3087, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Randy Parker or Kathleen Mathews at the above address, by phone at 801-538-7108 or 801-538-7103, by FAX at 801-538-7126 or 801-538-7126, or by Internet E-mail at rparker@utah.gov or kmathews@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 05/01/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/02/2003

AUTHORIZED BY: Cary G. Peterson, Commissioner

R65. Agriculture and Food, Marketing and Conservation.

R65-7. Horse Racing.

R65-7-3. Commission Powers and Jurisdiction.

1. **Description and Powers.** The Utah Horse Racing Commission is an administrative body created by Section 4-38-3. The Commission consists of five members which are appointed by the governor, confirmed by the senate, and whose powers and duties are prescribed by the legislature. The Commission appoints an executive director who is the administrative head of the agency, and the Commission determines the duties of the executive director. The Commission shall have supervision of all race meetings held in the State of Utah, and all occupation and organization licensees in the State and all persons on the property of an organization licensee.

2. **Jurisdiction.** Without limitations by specific mention hereof, the stated purposes of the Rules and Regulations hereby promulgated are as follows:

A. To encourage agriculture and breeding of horses in this State; and

B. To maintain race meetings held in the State of the highest quality and free of any horse racing practices which are corrupt, incompetent, dishonest or unprincipled; and

C. To maintain the appearance as well as the fact of complete honesty and integrity of horse racing in this State; and

D. To generate public revenues.

E. Commission jurisdiction of a race meet commences one hour prior to post time and ends one hour following the last posted race.

3. **Controlling Authority.** The law, the rules, and the orders of the Commission supersede the conditions of a race meeting and govern Thoroughbred, Quarter Horse, Appaloosa, Arabian, Paint and Pinto racing, except in the event it can have no application to a specific type of racing. In the latter case, the Stewards may enforce rules or conditions of The Jockey Club for Thoroughbred racing, the American Quarter Horse Association for Quarter Horse racing; the Appaloosa Horse Club for Appaloosa racing; the Arabian Horse Racing Association of America for Arabian racing; the American Paint Horse Association for Paint racing; and the Pinto Horse Association of America, Inc., for Pinto racing; if such rules or conditions are not inconsistent with the Laws of the State of Utah and the Rules of the Commission.

4. **Punishment By The Commission.** Violation of the Act and rules promulgated by the Commission, whether or not a penalty is fixed therein, is punishable in the discretion of the Commission by denial, revocation or suspension of any license; by fine; by exclusion from all racing enclosures under the jurisdiction of the Commission; or by any combination of these penalties. Fines imposed by the Commission shall not exceed \$10,000 against individuals for each violation, any Rules or regulations promulgated by the Commission, or any Order of the Commission; or for any other action which, in the discretion of the Commission, is a detriment or impediment to horse racing, according to Subsection 4-38-9(2).

5. **Extension For Compliance.** If a licensee fails to perform an act or obtain required action from the Commission within the time prescribed therefore by these Rules, the Commission, at some subsequent time, may allow the performance of such act or may take the necessary action with the same effect as if the same were performed within the prescribed time.

6. Notice To Licensee. Whenever notice is required to be given by the Commission or the Stewards, such notice shall be given in writing by personal delivery to the person to be notified or by mailing, Certified Mail, Return Receipt Requested, such notice to the last known address furnished to the Commission; or may be given as is provided for service of process in a civil proceeding in the State of Utah and pursuant to the Administrative Procedures Act.

7. Location For Information Or Filing With Commission. When information is requested or a notice in any matter is required to be filed with the Commission, such notice shall be delivered to an authorized representative of the Commission at an office of the Commission on or before the filing deadline. Offices of the Commission are currently located at: State of Utah, Department of Agriculture and Food, 350 North Redwood Road, Salt Lake City, UT 84116.

8. Public Inspection Of Documents. All forms adopted by the Commission together with all Rules and other written statements of policy or interpretation; and all final orders, decisions, and opinions, formulated, adopted or used by the Commission in the discharge of its functions are available for public inspection at the above office.

9. Forms And Instruction. The following forms and instructions for their use have been adopted by the Commission:

Apprentice Jockey Certificate
 Authorized Agent Agreement
 Fingerprint Card
 Identifier's Daily Report
 Lease Agreement
 Occupation Licensee Application(s)
 Occupation License Renewal Application(s)
 Open Claim Certificate
 Organization's Daily Report
 Organization Licensee Application
 Petition for Declaratory Ruling
 Petition for Promulgation, Amendment or Repeal of Rule
 Petition in and before the Utah Horse Commission
 Postmortem Examination Report
 Stable Name, Corporation, Partnership or Syndicate Registration

Form

Stewards' Daily Report
 Stewards' Hearing Notice
 Stewards' Hearing Reports
 Subpoena (Steward and Commission)
 Test Barn Diuretic Approval Form

10. Forms for substituting petitions for promulgating or repealing of rules, and for requests for declaratory ruling are available at the Utah State Department of Agriculture and Food.

R65-7-13. Drugs and Medication Exceptions and Illegal Practices.

1. Horses Tested. The winner of every race and such other horses as the stewards or commission veterinarian may designate shall be escorted by the veterinarian assistant after the race to the testing enclosure for examination by the authorized representative of the Commission and the taking of specimens shall be by the commission veterinarian or his assistant.

2. Trainer Present at Testing. The trainer, or his authorized representative, must be present in the testing enclosure when a urine or other specimen is taken from a horse, the sample tag attached to the specimen shall be signed by the trainer or his representative, as witness of taking of the specimen. Willful failure to be present at or a refusal to allow the taking of the specimen, or any act or threat to impede or prevent or otherwise interfere therewith, shall subject the person or persons doing so to immediate suspension and fine by the stewards and

the matter shall be referred to the Commission for such further penalty as may be determined.

3. Specimens Delivered to Laboratory. All specimens taken by or under the direction of the commission veterinarian, or other authorized representative of the Commission, shall be delivered to the laboratory approved by the Commission for official analysis. Each specimen shall be marked by number and date and may also bear such information as may be essential to its proper analysis; but the identity of the horse from the specimen was taken or the identity of its owner, trainer, jockey or stable shall not be revealed to the laboratory. The container of specimen shall be sealed as soon as the specimen is placed therein and shall bear the name of the Commission.

4. Medication. The commission veterinarian, the Commission or any member of the Board of Stewards may take samples of any medicines or other materials suspected of containing improper medication, drugs or chemicals which would affect the racing conditions of a horse in a race and which may be found in stables or elsewhere on race track grounds or in the possession of such tracks or any person connected with racing and the same shall be delivered to the laboratory designated by the Commission.

5. The Only Non-Steroidal Anti-Inflammatory Drug Permitted. Phenylbutazone shall be administered to the horse no later than 24 hours prior to the time the horse is scheduled to race.

6. Phenylbutazone Levels Permitted and Penalty. No urine sample taken from a horse shall exceed 165 micrograms of phenylbutazone or its metabolites per milliliter of urine or shall not exceed 5 micrograms per milliliter of blood plasma. On a first violation period at phenylbutazone concentrations above 5 ug/ml but below 10 ug/ml plasma or serum: a minimum fine of \$250.00; at concentrations above 10 ug/ml plasma: a fine of up to \$500.00.

On a second violation within a 12 month period at phenylbutazone concentrations above 5 ug/ml but below 10 ug/ml plasma or serum: a minimum fine of \$500.00; at concentrations above 10 ug/ml plasma: a fine of up to \$1,000.00.

On a third or subsequent violation within a 12-month period: a fine of \$1,000.00, a suspension of 30 days, and loss of purse.

7. Administered under Direction of Commission Licensed Veterinarian. Phenylbutazone must be administered under the direction of a commission licensed veterinarian.

8. List Provided. Horses which are on phenylbutazone shall not be indicated on the daily racing programs or any other publications except that a list of horses on phenylbutazone will be kept by the stewards [posted at a location designated by the Commission.]

9. Lasix Treatment. Any horse which exhibits symptoms of Epistaxis and/or respiratory tract hemorrhage is eligible for placement on the bleeder list and for treatment on race days with the approved medication to prevent or limit bleeding during racing.

10. Bleeders Listing. To be placed on the bleeders list, a horse must be found to have, during or immediately following a race or workout, shed free blood from one or both nostrils or bled internally in the respiratory tract. A Commission licensed veterinarian, following his or her personal examination of a horse, or after consulting with the horses' private veterinarian, shall be allowed to certify a horse as a bleeder. A universal bleeders certificate is required.

11. License Required. In any and all cases, private veterinarians must be licensed with the Utah Horse Racing Commission as a veterinarian in order to administer Lasix.

12. Horse Removed From Bleeders List. A Commission licensed veterinarian may remove a horse from the bleeders list, provided a request is made in writing and it is the recommendation of the veterinarian of the horse, or after an examination by the veterinarian, it

is determined that the horse is not a bleeder or is no longer eligible for the bleeders list.

13. Treatment Procedure. Horses on the bleeders list must be treated at least four hours prior to post time with the bleeder medication furosemide, (i.e. Lasix). No other treatment is permitted for bleeder treatment. Bleeder medication must be administered by a Commission licensed veterinarian, such dosage not to exceed 250 mg. The bleeder medication is administered by the trainers veterinarian, and must be witnessed by the trainer or his designee upon their request. Administration of the bleeder medication must be reported in writing on a form designated by the Commission, to the track management no later than two hours prior to the scheduled post time of the last live race of the program.

14. Lasix Levels Permitted and Penalty. Any horse whose post race blood tests contains a level in excess of 80 nanograms of furosemide per milliliter of plasma will be said to be positive for Lasix overage and in violation of Utah Horse Racing Rules and Regulations. Any horse whose post-race urine creatinine is less than 40 milligrams creatinine per 100 milliliters of urine, and the ratio of urine furosemide to urine creatinine does not exceed 0.15, with urine furosemide being measured in micrograms per milliliter of urine will be said to be positive for Lasix overage and in violation of Utah Horse Racing rules.

A. A finding of a chemist of furosemide (Lasix) exceeding the allowable test levels given above shall be considered prima facie evidence that the medication was administered to the horse and carried in the body of the horse while participating in the race.

B. In these cases, a fine and/or suspension will be levied to such horse trainer under the trainer responsibility rule and the horse will be disqualified from the race.

15. Horses Designated. The horses' trainer or designated agent is responsible to enter horses correctly indicating the prescribed medication for the horse. Horses approved for Lasix medication will be designated on the overnight and the daily program with a Lasix or "L". A list of horses approved for and using Lasix medication will be maintained by the stewards.

16. Bleeder Disqualification. Any horse that bleeds a second time in Utah shall not be able to race for a period of 30 days from the date of the second bleeding offense. Any horse that bleeds for a third time shall be suspended from racing for a period of one year from the date of the third offense. Any horse bleeding for the fourth time will be given a lifetime suspension from racing.

17. Disqualification of Owner or Trainer. A horse owner or trainer found to have committed illegal practices under this chapter or found to have administered any non-approved medication substances in violation of the rules in this chapter, shall be deemed disqualified and denied, or shall promptly return, any portion of the purse or sweepstakes or trophy awarded in the affected race, and shall be distributed as in the case of a disqualification. If the affected race is a qualifying race for a subsequent race and if a horse shall be so disqualified, the eligibility of the other horses which ran in the affected race, and which have started in the subsequent race before announcement of such disqualification shall not in any way be affected.

18. Hypodermic Instruments Prohibited. Except by specific written permission of the presiding steward, no person within the grounds of the racing association where the horses are lodged or kept shall have possession of, upon the premises which he occupies or has the right to occupy or in any of his personal property or effects, any hypodermic instrument, hypodermic syringes or hypodermic needle which may be used for injection into any horse of any medication prohibited by this rule. Every racing association is required to use all reasonable efforts to prevent the violation of this rule.

19. Search Provisions. Every racing association, the Commission or the stewards shall have the right to enter, search and inspect the buildings, stables, rooms and other places where horses which are eligible to race are kept, or where property and effects of the licensee are kept within the grounds of the association. Any licensee accepting a license shall be deemed to have consented to such search and to the seizure of any non-approved or prohibited materials, chemicals, drugs or devices and anything apparently intended to be used in connection therewith.

20. Daily Medication Reports. All practicing veterinarians must submit daily to the commission veterinarian a medication report form furnished by the Commission containing the following:

- A. Name, age, sex and breed of the horse.
- B. The permitted drug used (Bute or Lasix).
- C. The time administered.
- D. The route of the administration.

E. The report must be dated and signed by the veterinarian so administering the medication. Any such report is confidential and its contents shall not be disclosed except in a proceeding before the stewards or the Commission or in the exercise of the Commission's jurisdiction.

21. Prima Facie Evidence. If the stewards find that any non-approved medication, for which the purpose of definition shall include any drug, chemical, narcotic, anesthetic, or analgesic has been administered to a horse in such a manner that it is present in a pre-race or post-race test sample, such presence shall constitute prima facie evidence that the horse has been illegally medicated.

22. Trainer Responsibility. Under all circumstances, the horse of record trainer shall be responsible for the horse he trains.

KEY: horses

~~April 16, 2002~~ 2003

Notice of Continuation October 19, 2001

4-38-4



Education, Administration
R277-717
Math, Engineering, Science
Achievement (MESA)

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 26087
FILED: 03/12/2003, 16:51

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to increase the participation range for MESA students, change the Application Review Committee membership, and provide for better coordination among public education, higher education, industry, and community groups in encouraging participation of underserved ethnic minority and female students in designated core subjects.

SUMMARY OF THE RULE OR CHANGE: The amendments to this rule provide for a MESA annual report, provides for more

collaboration between public education and business, and changes some terminology.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-17a-121

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There are no anticipated cost or savings to state budget beyond the line item appropriation from the Legislature to the State Board of Education because any costs for program participation will be covered by the school.

❖LOCAL GOVERNMENTS: There are no anticipated cost or savings to local government. School districts receive funds based on the numbers of identified MESA students and approval of district plans. Districts may supplement state funds with private or local monies. Any costs for program participation by students will be covered by the school.

❖OTHER PERSONS: There should be no cost(s) or fees to any MESA student participant because any costs for program participation will be covered by the schools.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Funds have been appropriated by the Legislature to support the MESA program.

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 05/01/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/02/2003

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R277. Education, Administration.

R277-717. Mathematics, Engineering, Science Achievement (MESA).

R277-717-1. Definitions.

A. "Annual report" means information and data identified under R277-717-3E provided by funding recipients to the Utah State Office of Education by May 1 of each year as a requirement for continued funding of the school or school district program.

[A]B. "Board" means the Utah State Board of Education.

[D]C. "Mathematics, Engineering, Science Achievement (MESA)" program means a course or courses offered during the regular school day or a club held after school that involves identified students and addresses identified district objectives with ~~designated~~underserved ethnic minority and all female students. MESA programs, activities, and courses or classes may be offered at all grade levels. Programs should be coordinated among high schools and their feeder schools.

[E]D. "MESA Public Education Funding Application Review Committee (Committee)" means a funding advisory committee to the USOE composed of ~~eleven~~nine members as follows: Coalition of Minorities Advisory Committee (CMAC) (4), school districts, including representatives of districts that have and have not applied for MESA funding (3), ~~[USOE staff (2)]~~higher education members of the Mathematics, Engineering, Science Achievement/Science, Technology, Engineering Program (MESA/STEP) Advisory Board(2). USOE staff shall facilitate the funding application review process but shall not vote in any Committee decisions.

[B]E. "~~Designated~~Minority Students" means African American students, Asian students, ~~[Native~~American Indian/Alaskan Native students, Hispanic/Latino students, ~~[or~~]Pacific Islander students or other underserved ethnic minority students as designated by the applicant.

[C]F. "School District or School ~~[Plan]~~Proposal" means a ~~[plan]~~proposal outlined in writing, including budget and evaluation components developed by each school district receiving MESA funding or, if so determined by the district, by each recipient school.

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

H. "Utah MESA/STEP Consortium" means a collaboration among public education, higher education, industry, and professional and community groups to increase the number of underserved ethnic minority and all female students to participate and succeed in academic and career pursuits in mathematics, science, engineering, and related technical fields.

R277-717-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution, Article X, Section 3, which vests general control and supervision of public education in the Board, Section 53A-4-20[2]5 which assigns to the Board the responsibility for developing standards and administering funds for a program promoting educational excellence, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-121 which appropriates funding for programs for at risk youth. The USOE shall provide overall supervision of the program and budget and shall recommend funding for MESA programs based on MESA objectives and Board funding priorities.

B. This rule establishes standards and procedures to direct recipient school districts or schools to develop ~~[plans]~~proposals to encourage the participation of ~~[underrepresented]~~underserved ethnic minority and all female students who traditionally have not participated in mathematics, engineering, and science classes and programs ~~[dis]~~proportionately to white males.

R277-717-3. [Plan]Proposal Criteria.

A. School ~~[D]~~district or school ~~[plans]~~proposals shall identify objectives and activities to address MESA and Board objectives.

B. The objectives of the MESA ~~[organization]~~program are:

(1) to increase the number of ~~designated~~underserved ethnic minority and all female students who pursue course work, advanced

study and possible careers in mathematics, engineering, and science areas;

(2) to provide a program ~~[that will]~~ and activities designed to motivate [designated] underserved ethnic minority and all female students to take better advantage of all existing educational opportunities;

(3) ~~[to] an~~ increase in graduation rates of [designated minority and all female underrepresented students from high school] MESA-involved students from high school;

(4) to strengthen the self-image of ~~[designated] underserved ethnic minority and all female students~~ relating to their success in mathematics and science courses, and to ~~[enable] provide them with skills and opportunities~~ to become successful role models for other students;

(5) to provide ~~[designated] underserved ethnic minority and all female students~~ the opportunity to relate and associate with successful role models; and

(6) to coordinate the efforts of public schools, colleges and universities, the USOE, industries, professional and community groups, and others in the development and maintenance of academic support programs to increase the participation of ~~[designated] underserved ethnic minority and all female students in [the fields] academic and career pursuits~~ of mathematics and science.

Examples of such courses include:

- (1) ATE classes;
- (2) community school classes;
- (3) concurrent enrollment;
- (4) advanced placement classes; or
- (5) classes offered through higher education institutions.

C. Courses shall include secondary courses that place ~~[designated] underserved ethnic minority and all female students~~ on a college preparation track for post high school opportunities in mathematics and science.

D. Examples of MESA activities include:

(1) regularly scheduled after-school meetings with advisors to hear guest presenters;

(2) tutoring sessions, particularly in mathematics~~[,]~~ and science including study aids;

(3) field trips;

(4) hands-on activities designed to introduce students to career possibilities, curriculum options or additional courses of study;

(5) exposure to career opportunities in mathematics, engineering, and science, including teaching in these fields as a potential career;

(6) community service designed to address school interest and attendance issues as well as to introduce ~~[designated] underserved ethnic minority and all female students~~ to mathematics, science, engineering-related businesses/activities and opportunities for high school and post-secondary classes and the future; and

(7) internships or work experiences in identified areas which may be encouraged by student stipends or academic credit or both.

E. A ~~[MESA plan]~~ school district or school proposal shall include an annual report of the previous year's activities from the funding recipient to the USOE ~~[which shall include]:~~

- (1) Proposal includes:
 - (a) a program narrative;
 - (b) a plan to coordinate program activities with MESA objectives;
 - (c) a projected budget; and
 - (d) an evaluation plan.

(2) Annual report includes:

(1) a ~~[a]~~ an accounting for MESA funds spent in the previous year consistent with objectives identified in the [plan] proposal; [

(2) a program narrative; and]

(b) descriptions and examples of materials or activities that encouraged participation of underserved ethnic minority and all female students in MESA-funded courses and activities;

(3) c ~~[c]~~ specific numbers or examples of increased participation or success in mathematics, science, engineering courses/activities by [designated] underserved ethnic minority and all female students[-];

(d) a program evaluation based on MESA and Board objectives and criteria; and

(e) evidence of program response to evaluation data.

R277-717-4. Budget.

A. ~~[Budget items]~~ Proposed expenditures shall be tied to objectives.

B. The budget may include payments to compensate schools for school fees directly related to successful participation by ~~[designated] underserved ethnic minority [or] and all female students~~ in identified MESA courses or activities.

C. School [D] ~~[D]~~ districts or schools are encouraged to consider additional course alternatives for identified students ~~[including:~~

- (1) ATE classes;
- (2) community school classes;
- (3) concurrent enrollment;
- (4) advanced placement courses].

R277-717-5. Board Funding Priorities.

The Board shall fund school district or school programs based on priorities and criteria including:

A. programs that clearly address all MESA objectives;

B. programs that provide matching funds from school districts or federal sources, or both;

C. programs that show an increase in participants of underserved ethnic minority and all female participants over the previous year;

D. increased participation of MESA students in college preparation classes;

E. increased rate of graduation among MESA students;

F. innovative and effective counseling and tutoring models; and

G. total number of targeted students in the school district or school's population.

R277-717-[5]6. [Plan] Proposal Applications and Timeline.

A. ~~[Plan applications]~~ Proposals shall be submitted annually by school districts or schools with approval of their governing board to the Committee no later than May 1 of each year.

B. ~~[Plan applications]~~ Proposals shall be submitted to the USOE on forms provided by the USOE and consistent with state and federal laws and USOE timelines.

C. State funding may require matching funding from local or federal sources. Applications may require identification of matching local or community funds.

D. The Committee may seek additional information from applicants and may assist applicants to align proposed expenditures with MESA objectives.

E. The Committee shall make final recommendations to the USOE no later than June 15.

~~[D]E.~~ The ~~[MESA Public Education Funding Application Review Committee]~~USOE shall make recommendations to the Board for approval of program funding.

KEY: minority education, mathematics, engineering, science
~~[January 4, 2002]~~2003

Art X Sec 3

53A-4-205

53A-1-401(3)

▼ ————— ▼

Environmental Quality, Radiation Control **R313-19-100** Transportation

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26074

FILED: 03/07/2003, 15:47

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment maintains rules which are compatible with 10 CFR 71.

SUMMARY OF THE RULE OR CHANGE: The incorporation by reference of 10 CFR 71 is updated from the 1998 edition to the 2002 edition. The changes involve incorporation of program elements with significant direct transboundary implications that the State should adopt with essentially identical language to meet compatibility requirements of the U.S. Nuclear Regulatory Commission.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-3-104 and 19-3-108

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 10 CFR 71 (2002)

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** Changes to the rule will not affect the licensing or inspection process, so there will be no cost or savings impact on the state budget.

❖**LOCAL GOVERNMENTS:** Changes to the rule will not affect local governments; therefore, there will be no cost or savings impact.

❖**OTHER PERSONS:** Since 1998, there have not been any significant changes to 10 CFR 71 incorporated into the rule by reference prescribing requirements for the transportation of radioactive materials; therefore, there is no cost or savings impact associated with the rule change for other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional costs are anticipated for offerors and/or carriers of radioactive materials.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No additional costs are anticipated for businesses associated with this rule change.

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

ENVIRONMENTAL QUALITY

RADIATION CONTROL

Room 212

168 N 1950 W

SALT LAKE CITY UT 84116-3085, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Julie Felice at the above address, by phone at 801-536-4256, by FAX at 801-533-4097, or by Internet E-mail at jfelice@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 05/01/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2003

AUTHORIZED BY: William Sinclair, Director

R313. Environmental Quality, Radiation Control.

R313-19. Requirements of General Applicability to Licensing of Radioactive Material.

R313-19-100. Transportation.

For purposes of Section R313-19-100, 10 CFR 71.4, ~~[71.10, 71.12, 71.13(a) and (b), 71.14, through 71.16, 71.47, [71.81]71.83, 71.85 through 71.89, 71.97, [(1998),] and Appendix A to [p]Part 71 (2002)]~~ are incorporated by reference with the following clarifications or exceptions:

(1) The substitution of the following:

(a) ~~["Issued by the Executive Secretary" for reference to "issued by the Commission" in 10 CFR 71.4;~~

~~—(b)—] "Licensee" for reference to "licensee of the Commission";~~

~~([e]b) "Subsection R313-19-100(3)" for reference to "10 CFR 71.5";~~

~~([d]c) "Subsection R313-15-906(5)" for reference to "10 CFR 20.1906(e)"; and~~

~~([e]d) "Section R313-15-502" for reference to "10 CFR 20.1502"; and~~

~~—(f) "Utah" for reference to "the United States" in 10 CFR 71.10(b)(3);~~

(2) The exclusion of ~~[the following:~~

~~—(a)—] "certificate holder", "close reflection by water", "containment system", "conveyance", "licensed material", "maximum normal operating pressure", [and] "optimum interspersed hydrogenous moderation", and "state" in 10 CFR 71.4;~~

~~—(b) "10 CFR 71.12(b)", "10 CFR 71.14(b)", and "10 CFR 71.16(b)"; and~~

~~(c) "subpart H" in 10 CFR 71.12(c)(2), 71.14(c)(2), 71.16(d)(2), and 71.81;~~

(3) Transportation of licensed material.

(a) Each licensee who transports licensed material outside the site of usage, as specified in the license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the U.S. Department of Transportation (DOT) regulations in 49 CFR 170 through 189 (2002~~[1998]~~) appropriate to the mode of transport.

(i) The licensee shall particularly note DOT regulations in the following areas:

(A) Packaging--49 CFR 173.1 through 173.13, 173.21 through 173.40, and 173.401 through 173.476;

(B) Marking and labeling--49 CFR 172.300 through 172.338, 172.400 through 172.407, 172.436 through 172.440, and 172.400 through 172.450;

(C) Placarding--49 CFR 172.500 through 172.560 and Appendices B and C;

(D) Accident reporting--49 CFR 171.15 and 171.16;

(E) Shipping papers and emergency information--49 CFR 172.200 through 172.205 and 172.600 through 172.606;

(F) Hazardous material employee training--49 CFR 172.700 through 172.704; and

(G) Hazardous material shipper/carrier registration--49 CFR 107.601 through 107.620.

(ii) The licensee shall also note DOT regulations pertaining to the following modes of transportation:

(A) Rail--49 CFR 174.1 through 174.86 and 174.700 through 174.750;

(B) Air--49 CFR 175;

(C) Vessel--49 CFR 176.1 through 176.99 and 176.700 through 176.715; and

(D) Public Highway--49 CFR 177 and 390 through 397.

(b) If DOT regulations are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of the DOT specified in paragraph (a) of this section to the same extent as if the shipment or transportation were subject to DOT regulations. A request for modification, waiver, or exemption from those requirements, and any notification referred to in those requirements, must be filed with, or made to, the Executive Secretary.

(c) No person shall transport radioactive material or deliver radioactive material to a carrier for transport except as authorized in a general or specific license issued by the Executive Secretary or as exempted in R313-19-100(4).

(4) Exemptions.

(a) Common and contract carriers, freight forwarders and warehouse workers which are subject to the requirements of the U.S. Department of Transportation in 49 CFR 170 through 189 or the U.S. Postal Service in the U.S. Postal Service Domestic Mail Manual (DMM), Section C-023.9.0, and the U.S. Postal Service, are exempt from the requirements of R313-19-100 to the extent that they transport or store radioactive material in the regular course of their carriage for others or storage incident thereto. Common and contract carriers who

are not subject to the requirements of the U.S. Department of Transportation or U.S. Postal Service are subject to the requirements of R313-19-100(3)(c) and other applicable requirements of these rules.

(b) Any licensee is exempt from the requirements of R313-19-100 to the extent that the licensee delivers to a carrier for transport a package containing radioactive material having a specific activity not greater than 70 becquerel per gram (0.002 microcurie per gram).

KEY: license, reciprocity, transportation, exemptions
~~[October 7, 2002]2003~~

Notice of Continuation October 10, 2001

19-3-104

19-3-108

Environmental Quality, Radiation Control

R313-25

License Requirements for Land Disposal of Radioactive Waste - General Provisions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 26086

FILED: 03/11/2003, 14:03

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As a result of an administrative hearing, certain provisions of Rule R313-25 were challenged as to interpretation. Although the agency's interpretations were upheld, it was recommended that Section R313-25-3 be evaluated as to changes necessary to clarify provisions of the rule and to bring the rule in line with agency interpretations.

SUMMARY OF THE RULE OR CHANGE: There is a reference correction in Section R313-25-1. In Section R313-25-3, several changes are suggested to add clarity to the rule and bring the rule up to date. The most significant changes relate to clarifying emergency response coordination activities to on-site emergencies and requesting evidence from an applicant that a new commercial facility will eventually be transferred to the state or federal government for perpetual care.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-3-105

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** Changes to the rule will not effect the siting process, so there will be no cost or savings impact on the state budget. New applicants are required to pay actual costs up to \$250,000 for review of a siting application as set forth by the Utah Legislature in the DEQ Schedule of Fees.

❖LOCAL GOVERNMENTS: Changes to the rule will not affect local governments; therefore, there will be no cost or savings impact.

❖OTHER PERSONS: There is no cost or savings impact by changes to this rule. The amendment provides clarification of several key areas for the applicant and the public.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no impact to the already existing review fee for siting applications of actual costs up to \$250,000 as a result of the rule amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No additional costs are anticipated for applicants for commercial radioactive waste disposal facilities as a result of this rule amendment.

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

ENVIRONMENTAL QUALITY
RADIATION CONTROL
Room 212
168 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
William Sinclair at the above address, by phone at 801-536-4250, by FAX at 801-533-4097, or by Internet E-mail at bsinclair@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 05/01/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2003

AUTHORIZED BY: William Sinclair, Director

R313. Environmental Quality, Radiation Control.
R313-25. License Requirements for Land Disposal of Radioactive Waste - General Provisions.
R313-25-1. Purpose and Scope.

The rules in this chapter establish procedures, criteria, and terms and conditions upon which the ~~Department~~Executive Secretary issues licenses for the land disposal of wastes received from other persons. The requirements of R313-25 are in addition to, and not in substitution for, other applicable requirements of these rules.

R313-25-2. Definitions.

As used in R313-25, the following definitions apply:

"Active maintenance" means significant activity needed during the period of institutional control to maintain a reasonable assurance that the performance objectives in R313-25-19 and R313-25-20 are met. Active maintenance may include the pumping and treatment of water from a disposal unit, the replacement of a disposal unit cover, or other episodic or continuous measures. Active maintenance does not include custodial activities like repair of fencing, repair or

replacement of monitoring equipment, revegetation, minor additions to soil cover, minor repair of disposal unit covers, and general disposal site upkeep.

"Buffer zone" means a portion of the disposal site that is controlled by the licensee and that lies under the disposal units and between the disposal units and the boundary of the site.

"Commencement of construction" means clearing of land, excavation, or other substantial action that could adversely affect the environment of a land disposal facility. The term does not mean disposal site exploration, necessary roads for disposal site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the disposal site or the protection of environmental values.

"Custodial agency" means an agency of the government designated to act on behalf of the government owner of the disposal site.

"Disposal" means the isolation of wastes from the biosphere by placing them in a land disposal facility.

"Disposal site" means that portion of a land disposal facility which is used for disposal of waste. It consists of disposal units and a buffer zone.

"Disposal unit" means a discrete portion of the disposal site into which waste is placed for disposal. For near-surface disposal, the disposal unit may be a trench.

"Engineered barrier" means a man-made structure or device intended to improve the land disposal facility's performance under R313-25.

"Hydrogeologic unit" means a soil or rock unit or zone that has a distinct influence on the storage or movement of ground water.

"Inadvertent intruder" means a person who may enter the disposal site after closure and engage in activities unrelated to post closure management, such as agriculture, dwelling construction, or other pursuits which could, by disturbing the site, expose individuals to radiation.

"Intruder barrier" means a sufficient depth of cover over the waste that inhibits contact with waste and helps to ensure that radiation exposures to an inadvertent intruder will meet the performance objectives set forth in R313-25, or engineered structures that provide equivalent protection to the inadvertent intruder.

"Land disposal facility" means the land, buildings and structures, and equipment which are intended to be used for the disposal of radioactive waste.

"Monitoring" means observing and making measurements to provide data to evaluate the performance and characteristics of the disposal site.

"Near-surface disposal facility" means a land disposal facility in which waste is disposed of within approximately the upper 30 meters of the earth's surface.

"Site closure and stabilization" means those actions that are taken upon completion of operations that prepare the disposal site for custodial care, and that assure that the disposal site will remain stable and will not need ongoing active maintenance.

"Stability" means structural stability.

"Surveillance" means monitoring and observation of the disposal site to detect needs for maintenance or custodial care, to observe evidence of intrusion, and to ascertain compliance with other license and regulatory requirements.

"Treatment" means the stabilization or the reduction in volume of waste by a chemical or a physical process.

"Waste" means those low-level radioactive wastes as defined in Section 19-3-102 that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level waste has the same meaning as it does in the Low-Level Radioactive Waste Policy Act, Pub.L. 96-573, 94 Stat. 3347; thus, the term denotes radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, waste does not mean byproduct material as defined in 42 U.S.C. 2011(e)(2) of the Atomic Energy Act, uranium or thorium tailings and waste.

R313-25-3. ~~[Siting Criteria and]~~Pre-licensing Plan Approval Criteria for Siting of Commercial Radioactive Waste Disposal Facilities.

(1) Persons proposing to construct or operate commercial radioactive waste disposal facilities, including waste incinerators, shall obtain a plan approval from the Executive Secretary before applying for a license. Plans shall meet the siting criteria and plan approval requirements of Section R313-25-3 ~~and Section 19-3-405~~.

(2) The siting criteria and plan approval requirements in R313-25-3 apply to prelicensing plan approval applications.

(3) Treatment and disposal facilities, including commercial radioactive waste incinerators, shall not be located:

(a) within or underlain by:

(i) national, state, and county parks, monuments, and recreation areas; designated wilderness and wilderness study areas; wild and scenic river areas;

(ii) ecologically and scientifically significant natural areas, including wildlife management areas and habitats for listed or proposed endangered species as designated by federal law;

(iii) 100 year floodplains;

(iv) areas 200 feet distant from Holocene faults;

(v) underground mines, salt domes and salt beds;

(vi) dam failure flood areas;

(vii) areas subject to landslide, mud flow, or other earth movement, unless adverse impacts can be mitigated;

(viii) farmlands classified or evaluated as "prime", "unique", or of "statewide importance" by the U.S. Department of Agricultural Soil Conservation Service under the Prime Farmland Protection Act;

(ix) areas five miles distant from~~[of]~~ existing permanent dwellings, residential areas, and other habitable structures, including schools, churches, and historic structures;

(x) areas five miles distant from~~[of]~~ surface waters including intermittent streams, perennial streams, rivers, lakes, reservoirs, and wetlands;

~~(xi) areas 100 feet of uranium mill tailings;~~

(xi)~~[i]~~ areas 1000 feet distant from~~[of]~~ archeological sites to which adverse impacts cannot reasonably be mitigated;

(xii)~~[i]~~ recharge zones of aquifers containing ground water which has a total dissolved solids content of less than 10,000 mg/l; or

~~(xiv)~~~~[xiii]~~ drinking water source protection areas designated by the ~~[State]~~Utah Drinking Water ~~[Committee]~~Board;

(b) in areas:

(i) above or underlain by aquifers containing ground water which has a total dissolved solids content of less than 500 mg/l and which aquifers do not exceed state ground water standards for pollutants;

(ii) above or underlain by aquifers containing ground water which has a total dissolved solids content between 3000 and 10,000

mg/l when the distance from the surface to the ground water is less than 100 ft.;

~~(iii) areas~~~~[such as areas]~~ of extensive withdrawal of water,~~[gas, or oil];~~ mineral or energy resources.

(iv) above or underlain by weak and unstable soils, including soils that lose their ability to support foundations as a result of hydrocompaction, expansion, or shrinkage;

(v) above or underlain by karst terrains. ~~[~~

~~(4) Incinerators associated with land disposal facilities may not be located above aquifers containing ground water which has a total dissolved solids content below 3000 mg/l. Incinerators not associated with ground disposal facilities shall not be located above aquifers containing ground water which has a total dissolved solids content below 500 mg/l.]~~

~~(5)~~~~[4] Commercial radioactive waste disposal facilities~~~~[Facilities]~~ may not be located within a distance to existing drinking water wells and watersheds for public water supplies of ~~[one year ground water travel time plus 1000 feet for incinerators and of]~~ five years ground water travel time plus 1000 feet~~[for land disposal facilities]~~.

~~(6)~~~~[5] The plan approval siting application shall include hydraulic conductivity and other information necessary to estimate adequately the ground water travel distance.~~

~~(7)~~~~[6] The plan approval siting application shall include the results of studies adequate to identify the presence of ground water aquifers in the area of the proposed site and to assess the quality of the ground water of all aquifers identified in the area of the proposed site.]~~

~~(8) The Executive Secretary may require the applicant to conduct vadose zone or other near surface monitoring.]~~

~~(9)~~~~[7] Emergency response and safety.~~

(a) The plan approval siting application shall demonstrate the availability and adequacy of ~~[emergency]~~services for on-site emergencies, including medical and fire response. The application shall provide written evidence that the applicant has coordinated on-site emergency response plans with ~~[local and regional emergency response resources.]~~ the local emergency planning committee (LEPC).

(b) The plan approval siting application shall include a comprehensive plan~~[s]~~ for responding to emergencies ~~[both]~~ at the site~~[and those involving the transport of wastes within the state. Details of the proposed emergency response plan shall be given in the plan approval application and will be stipulated in the plan approval and radioactive materials license].~~

(c) The plan approval siting application shall show proposed routes for transportation of radioactive wastes within the state.~~[The Executive Secretary will not approve plans that propose radioactive waste transportation routes over roads or bridges where weight restrictions would be exceeded. The Executive Secretary will not approve plans that pose adverse impact or risk of harm to inhabited areas.]~~ The plan approval siting application shall address ~~[risks to inhabited areas, including both residential and non-residential areas; the width, condition, and types of roads to be used; roadside development on proposed routes; seasonal and climatic factors which may affect safety; alternate emergency access to the facility; the type, size, and configuration of vehicles proposed to haul wastes; transportation restrictions on proposed routes; and]~~ the transportation means and routes available to evacuate the population at risk in the event of on-site accidents, including spills and fires.

(8) The plan approval siting application shall provide evidence that if the proposed disposal site is on land not owned by state or federal government, that arrangements have been made for assumption of ownership in fee by a state or federal agency.

(14) Siting Authority. The Executive Secretary recognizes that Titles 10 and 17 of the Utah Code give cities and counties authority for local use planning and zoning. Nothing in R313-25-3 precludes cities and counties from establishing additional requirements as provided by applicable state and federal law.

R313-25-4. License Required.

(1) Persons shall not receive, possess, or dispose of waste at a land disposal facility unless authorized by a license issued by the Executive Secretary pursuant to R313-25 and R313-22.

(2) Persons shall file an application with the Executive Secretary pursuant to R313-22-32 and obtain a license as provided in R313-25 before commencement of construction of a land disposal facility. Failure to comply with this requirement may be grounds for denial of a license and other penalties established by law and rules.

R313-25-5. Content of Application.

In addition to the requirements set forth in R313-22-33, an application to receive from others, possess, and dispose of wastes shall consist of general information, specific technical information, institutional information, and financial information as set forth in R313-25-6 through R313-25-10.

R313-25-6. General Information.

The general information shall include the following:

- (1) identity of the applicant including:
 - (a) the full name, address, telephone number, and description of the business or occupation of the applicant;
 - (b) if the applicant is a partnership, the names and addresses of the partners and the principal location where the partnership does business;
 - (c) if the applicant is a corporation or an unincorporated association;
 - (i) the state where it is incorporated or organized and the principal location where it does business; and
 - (ii) the names and addresses of its directors and principal officers; and
 - (d) if the applicant is acting as an agent or representative of another person in filing the application, the applicant shall provide, with respect to the other person, information required under R313-25-6(1).
- (2) Qualifications of the applicant shall include the following:
 - (a) the organizational structure of the applicant, both offsite and onsite, including a description of lines of authority and assignments of responsibilities, whether in the form of administrative directives, contract provisions, or otherwise;
 - (b) the technical qualifications, including training and experience of the applicant and members of the applicant's staff, to engage in the proposed activities. Minimum training and experience requirements for personnel filling key positions described in R313-25-6(2)(a) shall be provided;
 - (c) a description of the applicant's personnel training program; and
 - (d) the plan to maintain an adequate complement of trained personnel to carry out waste receipt, handling, and disposal operations in a safe manner.
- (3) A description of:
 - (a) the location of the proposed disposal site;
 - (b) the general character of the proposed activities;
 - (c) the types and quantities of waste to be received, possessed, and disposed of;
 - (d) plans for use of the land disposal facility for purposes other than disposal of wastes; and
 - (e) the proposed facilities and equipment; and
 - (4) proposed schedules for construction, receipt of waste, and first emplacement of waste at the proposed land disposal facility.

R313-25-7. Specific Technical Information.

The application shall include certain technical information. The following information is needed to determine whether or not the applicant can meet the performance objectives and the applicable technical requirements of R313-25:

- (1) A description of the natural and demographic disposal site characteristics shall be based on and determined by disposal site selection and characterization activities. The description shall include geologic, geochemical, geotechnical, hydrologic, ecologic, archaeologic, meteorologic, climatologic, and biotic features of the disposal site and vicinity.
- (2) Descriptions of the design features of the land disposal facility and of the disposal units for near-surface disposal shall include those design features related to infiltration of water; integrity of covers for disposal units; structural stability of backfill, wastes, and covers; contact of wastes with standing water; disposal site drainage; disposal site closure and stabilization; elimination to the extent practicable of long-term disposal site maintenance; inadvertent intrusion; occupational exposures; disposal site monitoring; and adequacy of the size of the buffer zone for monitoring and potential mitigative measures.
- (3) Descriptions of the principal design criteria and their relationship to the performance objectives.
- (4) Descriptions of the natural events or phenomena on which the design is based and their relationship to the principal design criteria.
- (5) Descriptions of codes and standards which the applicant has applied to the design, and will apply to construction of the land disposal facilities.
- (6) Descriptions of the construction and operation of the land disposal facility. The description shall include as a minimum the methods of construction of disposal units; waste emplacement; the procedures for and areas of waste segregation; types of intruder barriers; onsite traffic and drainage systems; survey control program; methods and areas of waste storage; and methods to control surface water and ground water access to the wastes. The description shall also include a description of the methods to be employed in the handling and disposal of wastes containing chelating agents or other non-radiological substances which might affect meeting the performance objectives of R313-25.
- (7) A description of the disposal site closure plan, including those design features which are intended to facilitate disposal site closures and to eliminate the need for active maintenance after closure.
- (8) Identification of the known natural resources at the disposal site whose exploitation could result in inadvertent intrusion into the wastes after removal of active institutional control.
- (9) Descriptions of the kind, amount, classification and specifications of the radioactive material proposed to be received, possessed, and disposed of at the land disposal facility.

(10) Descriptions of quality assurance programs, tailored to low-level waste disposal, including audit and managerial controls, for the determination of natural disposal site characteristics and for quality control during the design, construction, operation, and closure of the land disposal facility and the receipt, handling, and emplacement of waste.

(11) A description of the radiation safety program for control and monitoring of radioactive effluents to ensure compliance with the performance objective in R313-25-19 and monitoring of occupational radiation exposure to ensure compliance with the requirements of R313-15 and to control contamination of personnel, vehicles, equipment, buildings, and the disposal site. The applicant shall describe procedures, instrumentation, facilities, and equipment appropriate to both routine and emergency operations.

(12) A description of the environmental monitoring program to provide data and to evaluate potential health and environmental impacts and the plan for taking corrective measures if migration is indicated.

(13) Descriptions of the administrative procedures that the applicant will apply to control activities at the land disposal facility.

(14) A description of the facility electronic recordkeeping system as required in R313-25-33.

R313-25-8. Technical Analyses.

The specific technical information shall also include the following analyses needed to demonstrate that the performance objectives of R313-25 will be met:

(1) Analyses demonstrating that the general population will be protected from releases of radioactivity shall consider the pathways of air, soil, ground water, surface water, plant uptake, and exhumation by burrowing animals. The analyses shall clearly identify and differentiate between the roles performed by the natural disposal site characteristics and design features in isolating and segregating the wastes. The analyses shall clearly demonstrate a reasonable assurance that the exposures to humans from the release of radioactivity will not exceed the limits set forth in R313-25-19.

(2) Analyses of the protection of inadvertent intruders shall demonstrate a reasonable assurance that the waste classification and segregation requirements will be met and that adequate barriers to inadvertent intrusion will be provided.

(3) Analysis of the protection of individuals during operations shall include assessments of expected exposures due to routine operations and likely accidents during handling, storage, and disposal of waste. The analysis shall provide reasonable assurance that exposures will be controlled to meet the requirements of R313-15.

(4) Analyses of the long-term stability of the disposal site shall be based upon analyses of active natural processes including erosion, mass wasting, slope failure, settlement of wastes and backfill, infiltration through covers over disposal areas and adjacent soils, and surface drainage of the disposal site. The analyses shall provide reasonable assurance that there will not be a need for ongoing active maintenance of the disposal site following closure.

R313-25-9. Institutional Information.

The institutional information submitted by the applicant shall include:

(1) A certification by the federal or state agency which owns the disposal site that the agency is prepared to accept transfer of the license when the provisions of R313-25-16 are met and will assume

responsibility for institutional control after site closure and for post-closure observation and maintenance.

(2) Evidence, if the proposed disposal site is on land not owned by the federal or a state government, that arrangements have been made for assumption of ownership in fee by the federal or a state agency.

R313-25-10. Financial Information.

This information shall demonstrate that the applicant is financially qualified to carry out the activities for which the license is sought. The information shall meet other financial assurance requirements of R313-25.

R313-25-11. Requirements for Issuance of a License.

A license for the receipt, possession, and disposal of waste containing radioactive material will be issued by the Executive Secretary upon finding that:

(1) the issuance of the license will not constitute an unreasonable risk to the health and safety of the public;

(2) the applicant is qualified by reason of training and experience to carry out the described disposal operations in a manner that protects health and minimizes danger to life or property;

(3) the applicant's proposed disposal site, disposal design, land disposal facility operations, including equipment, facilities, and procedures, disposal site closure, and post-closure institutional control, are adequate to protect the public health and safety as specified in the performance objectives of R313-25-19;

(4) the applicant's proposed disposal site, disposal site design, land disposal facility operations, including equipment, facilities, and procedures, disposal site closure, and post-closure institutional control are adequate to protect the public health and safety in accordance with the performance objectives of R313-25-20;

(5) the applicant's proposed land disposal facility operations, including equipment, facilities, and procedures, are adequate to protect the public health and safety in accordance with R313-15;

(6) the applicant's proposed disposal site, disposal site design, land disposal facility operations, disposal site closure, and post-closure institutional control plans are adequate to protect the public health and safety in that they will provide reasonable assurance of the long-term stability of the disposed waste and the disposal site and will eliminate to the extent practicable the need for continued maintenance of the disposal site following closure;

(7) the applicant's demonstration provides reasonable assurance that the requirements of R313-25 will be met;

(8) the applicant's proposal for institutional control provides reasonable assurance that control will be provided for the length of time found necessary to ensure the findings in R313-25-11(3) through (6) and that the institutional control meets the requirements of R313-25-28.

(9) the financial or surety arrangements meet the requirements of R313-25.

R313-25-12. Conditions of Licenses.

(1) A license issued under R313-25, or a right thereunder, may not be transferred, assigned, or disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to a person, unless the Executive Secretary finds, after securing full information, that the transfer is in accordance with the provisions of the Radiation Control Act and Rules and gives his consent in writing in the form of a license amendment.

(2) The Executive Secretary may require the licensee to submit written statements under oath.

(3) The license will be terminated only on the full implementation of the final closure plan, including post-closure observation and maintenance, as approved by the Executive Secretary.

(4) The licensee shall submit to the provisions of the Act now or hereafter in effect, and to all findings and orders of the Executive Secretary. The terms and conditions of the license are subject to amendment, revision, or modification, by reason of amendments to, or by reason of rules, and orders issued in accordance with the terms of the Act and these rules.

(5) Persons licensed by the Executive Secretary pursuant to R313-25 shall confine possession and use of the materials to the locations and purposes authorized in the license.

(6) The licensee shall not dispose of waste until the Executive Secretary has inspected the land disposal facility and has found it to conform with the description, design, and construction described in the application for a license.

(7) The Executive Secretary may incorporate, by rule or order, into licenses at the time of issuance or thereafter, additional requirements and conditions with respect to the licensee's receipt, possession, and disposal of waste as the Executive Secretary deems appropriate or necessary in order to:

- (a) protect health or to minimize danger to life or property;
- (b) require reports and the keeping of records, and to provide for inspections of licensed activities as the Executive Secretary deems necessary or appropriate to effectuate the purposes of the Radiation Control Act and Rules.

(8) The authority to dispose of wastes expires on the expiration date stated in the license. An expiration date on a license applies only to the above ground activities and to the authority to dispose of waste. Failure to renew the license shall not relieve the licensee of responsibility for implementing site closure, post-closure observation, and transfer of the license to the site owner.

R313-25-13. Application for Renewal or Closure.

(1) An application for renewal or an application for closure under R313-25-14 shall be filed at least 90 days prior to license expiration.

(2) Applications for renewal of a license shall be filed in accordance with R313-25-5 through 25-10. Applications for closure shall be filed in accordance with R313-25-14. Information contained in previous applications, statements, or reports filed with the Executive Secretary under the license may be incorporated by reference if the references are clear and specific.

(3) If a licensee has filed an application in proper form for renewal of a license, the license shall not expire unless and until the Executive Secretary has taken final action to deny application for renewal.

(4) In evaluating an application for license renewal, the Executive Secretary will apply the criteria set forth in R313-25-11.

R313-25-14. Contents of Application for Site Closure and Stabilization.

(1) Prior to final closure of the disposal site, or as otherwise directed by the Executive Secretary, the licensee shall submit an application to amend the license for closure. This closure application shall include a final revision and specific details of the disposal site closure plan included in the original license application

submitted and approved under R313-25-7(7). The plan shall include the following:

(a) additional geologic, hydrologic, or other data pertinent to the long-term containment of emplaced wastes obtained during the operational period;

(b) the results of tests, experiments, or other analyses relating to backfill of excavated areas, closure and sealing, waste migration and interaction with emplacement media, or other tests, experiments, or analyses pertinent to the long-term containment of emplaced waste within the disposal site;

(c) proposed revision of plans for:

(i) decontamination or dismantlement of surface facilities;

(ii) backfilling of excavated areas; or

(iii) stabilization of the disposal site for post-closure care.

(d) Significant new information regarding the environmental impact of closure activities and long-term performance of the disposal site.

(2) Upon review and consideration of an application to amend the license for closure submitted in accordance with R313-25-14(1), the Executive Secretary shall issue an amendment authorizing closure if there is reasonable assurance that the long-term performance objectives of R313-25 will be met.

R313-25-15. Post-Closure Observation and Maintenance.

The licensee shall observe, monitor, and carry out necessary maintenance and repairs at the disposal site until the site closure is complete and the license is transferred by the Executive Secretary in accordance with R313-25-16. The licensee shall remain responsible for the disposal site for an additional five years. The Executive Secretary may approve closure plans that provide for shorter or longer time periods of post-closure observation and maintenance, if sufficient rationale is developed for the variance.

R313-25-16. Transfer of License.

Following closure and the period of post-closure observation and maintenance, the licensee may apply for an amendment to transfer the license to the disposal site owner. The license shall be transferred when the Executive Secretary finds:

(1) that the disposal site was closed according to the licensee's approved disposal site closure plan;

(2) that the licensee has provided reasonable assurance that the performance objectives of R313-25 have been met;

(3) that funds for care and records required by R313-25-33(4) and (5) have been transferred to the disposal site owner;

(4) that the post-closure monitoring program is operational and can be implemented by the disposal site owner; and

(5) that the Federal or State agency which will assume responsibility for institutional control of the disposal site is prepared to assume responsibility and ensure that the institutional requirements found necessary under R313-25-11(8) will be met.

R313-25-17. Termination of License.

(1) Following the period of institutional control needed to meet the requirements of R313-25-11, the licensee may apply for an amendment to terminate the license.

(2) This application will be reviewed in accordance with the provisions of R313-22-32.

(3) A license shall be terminated only when the Executive Secretary finds:

(a) that the institutional control requirements of R313-25-11(8) have been met;

(b) that additional requirements resulting from new information developed during the institutional control period have been met;

(c) that permanent monuments or markers warning against intrusion have been installed; and

(d) that records required by R313-25-33(4) and (5) have been sent to the party responsible for institutional control of the disposal site and a copy has been sent to the Executive Secretary immediately prior to license termination.

R313-25-18. General Requirement.

Land disposal facilities shall be sited, designed, operated, closed, and controlled after closure so that reasonable assurance exists that exposures to individuals do not exceed the limits stated in R313-25-19 and 25-22.

R313-25-19. Protection of the General Population from Releases of Radioactivity.

Concentrations of radioactive material which may be released to the general environment in ground water, surface water, air, soil, plants or animals shall not result in an annual dose exceeding an equivalent of 0.25 mSv (0.025 rem) to the whole body, 0.75 mSv (0.075 rem) to the thyroid, and 0.25 mSv (0.025 rem) to any other organ of any member of the public. No greater than 0.04 mSv (0.004 rem) committed effective dose equivalent or total effective dose equivalent to any member of the public shall come from groundwater. Reasonable efforts should be made to maintain releases of radioactivity in effluents to the general environment as low as is reasonably achievable.

R313-25-20. Protection of Individuals from Inadvertent Intrusion.

Design, operation, and closure of the land disposal facility shall ensure protection of any individuals inadvertently intruding into the disposal site and occupying the site or contacting the waste after active institutional controls over the disposal site are removed.

R313-25-21. Protection of Individuals During Operations.

Operations at the land disposal facility shall be conducted in compliance with the standards for radiation protection set out in R313-15 of these rules, except for release of radioactivity in effluents from the land disposal facility, which shall be governed by R313-25-19. Every reasonable effort should be made to maintain radiation exposures as low as is reasonably achievable, ALARA.

R313-25-22. Stability of the Disposal Site After Closure.

The disposal facility shall be sited, designed, used, operated, and closed to achieve long-term stability of the disposal site and to eliminate, to the extent practicable, the need for ongoing active maintenance of the disposal site following closure so that only surveillance, monitoring, or minor custodial care are required.

R313-25-23. Disposal Site Suitability Requirements for Land Disposal - Near-Surface Disposal.

(1) The primary emphasis in disposal site suitability is given to isolation of wastes and to disposal site features that ensure that the long-term performance objectives are met.

(2) The disposal site shall be capable of being characterized, modeled, analyzed and monitored.

(3) Within the region where the facility is to be located, a disposal site should be selected so that projected population growth and future developments are not likely to affect the ability of the disposal facility to meet the performance objectives of R313-25.

(4) Areas shall be avoided having known natural resources which, if exploited, would result in failure to meet the performance objectives of R313-25.

(5) The disposal site shall be generally well drained and free of areas of flooding or frequent ponding. Waste disposal shall not take place in a 100-year flood plain, coastal high-hazard area or wetland, as defined in Executive Order 11988, "Floodplain Management Guidelines."

(6) Upstream drainage areas shall be minimized to decrease the amount of runoff which could erode or inundate waste disposal units.

(7) The disposal site shall provide sufficient depth to the water table that ground water intrusion, perennial or otherwise, into the waste will not occur. The Executive Secretary will consider an exception to this requirement to allow disposal below the water table if it can be conclusively shown that disposal site characteristics will result in molecular diffusion being the predominant means of radionuclide movement and the rate of movement will result in the performance objectives being met. In no case will waste disposal be permitted in the zone of fluctuation of the water table.

(8) The hydrogeologic unit used for disposal shall not discharge ground water to the surface within the disposal site.

(9) Areas shall be avoided where tectonic processes such as faulting, folding, seismic activity, vulcanism, or similar phenomena may occur with such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of R313-25 or may preclude defensible modeling and prediction of long-term impacts.

(10) Areas shall be avoided where surface geologic processes such as mass wasting, erosion, slumping, landsliding, or weathering occur with sufficient such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of R313-25, or may preclude defensible modeling and prediction of long-term impacts.

(11) The disposal site shall not be located where nearby facilities or activities could adversely impact the ability of the site to meet the performance objectives of R313-25 or significantly mask the environmental monitoring program.

R313-25-24. Disposal Site Design for Near-Surface Land Disposal.

(1) Site design features shall be directed toward long-term isolation and avoidance of the need for continuing active maintenance after site closure.

(2) The disposal site design and operation shall be compatible with the disposal site closure and stabilization plan and lead to disposal site closure that provides reasonable assurance that the performance objectives will be met.

(3) The disposal site shall be designed to complement and improve, where appropriate, the ability of the disposal site's natural characteristics to assure that the performance objectives will be met.

(4) Covers shall be designed to minimize, to the extent practicable, water infiltration, to direct percolating or surface water away from the disposed waste, and to resist degradation by surface geologic processes and biotic activity.

(5) Surface features shall direct surface water drainage away from disposal units at velocities and gradients which will not result in erosion that will require ongoing active maintenance in the future.

(6) The disposal site shall be designed to minimize to the extent practicable the contact of water with waste during storage, the contact of standing water with waste during disposal, and the contact of percolating or standing water with wastes after disposal.

R313-25-25. Near Surface Land Disposal Facility Operation and Disposal Site Closure.

(1) Wastes designated as Class A pursuant to R313-15-307 of these rules shall be segregated from other wastes by placing them in disposal units which are sufficiently separated from disposal units for the other waste classes so that any interaction between Class A wastes and other wastes will not result in the failure to meet the performance objectives of R313-25. This segregation is not necessary for Class A wastes if they meet the stability requirements of R313-15-308(2).

(2) Wastes designated as Class C pursuant to R313-15-307 shall be disposed of so that the top of the waste is a minimum of five meters below the top surface of the cover or shall be disposed of with intruder barriers that are designed to protect against an inadvertent intrusion for at least 500 years.

(3) Except as provided in R313-25-1(1), only waste classified as Class A, B, or C shall be acceptable for near-surface disposal. Wastes shall be disposed of in accordance with the requirements of R313-25-25(4) through 11.

(4) Wastes shall be emplaced in a manner that maintains the package integrity during emplacement, minimizes the void spaces between packages, and permits the void spaces to be filled.

(5) Void spaces between waste packages shall be filled with earth or other material to reduce future subsidence within the fill.

(6) Waste shall be placed and covered in a manner that limits the radiation dose rate at the surface of the cover to levels that at a minimum will permit the licensee to comply with all provisions of R313-15-105 at the time the license is transferred pursuant to R313-25-16.

(7) The boundaries and locations of disposal units shall be accurately located and mapped by means of a land survey. Near-surface disposal units shall be marked in such a way that the boundaries of the units can be easily defined. Three permanent survey marker control points, referenced to United States Geological Survey or National Geodetic Survey control stations, shall be established on the site to facilitate surveys. The United States Geological Survey or National Geodetic Survey control stations shall provide horizontal and vertical controls as checked against United States Geological Survey or National Geodetic Survey record files.

(8) A buffer zone of land shall be maintained between any buried waste and the disposal site boundary and beneath the disposed waste. The buffer zone shall be of adequate dimensions to carry out environmental monitoring activities specified in R313-25-26(4) and take mitigative measures if needed.

(9) Closure and stabilization measures as set forth in the approved site closure plan shall be carried out as the disposal units are filled and covered.

(10) Active waste disposal operations shall not have an adverse effect on completed closure and stabilization measures.

(11) Only wastes containing or contaminated with radioactive material shall be disposed of at the disposal site.

(12) Proposals for disposal of waste that are not generally acceptable for near-surface disposal because the wastes form and disposal methods shall be different and, in general, more stringent than those specified for Class C waste, may be submitted to the Executive Secretary for approval.

R313-25-26. Environmental Monitoring.

(1) At the time a license application is submitted, the applicant shall have conducted a preoperational monitoring program to provide basic environmental data on the disposal site characteristics. The applicant shall obtain information about the ecology, meteorology, climate, hydrology, geology, geochemistry, and seismology of the disposal site. For those characteristics that are subject to seasonal variation, data shall cover at least a 12-month period.

(2) During the land disposal facility site construction and operation, the licensee shall maintain an environmental monitoring program. Measurements and observations shall be made and recorded to provide data to evaluate the potential health and environmental impacts during both the construction and the operation of the facility and to enable the evaluation of long-term effects and need for mitigative measures. The monitoring system shall be capable of providing early warning of releases of waste from the disposal site before they leave the site boundary.

(3) After the disposal site is closed, the licensee responsible for post-operational surveillance of the disposal site shall maintain a monitoring system based on the operating history and the closure and stabilization of the disposal site. The monitoring system shall be capable of providing early warning of releases of waste from the disposal site before they leave the site boundary.

(4) The licensee shall have plans for taking corrective measures if the environmental monitoring program detects migration of waste which would indicate that the performance objectives may not be met.

R313-25-27. Alternative Requirements for Design and Operations.

The Executive Secretary may, upon request or on his own initiative, authorize provisions other than those set forth in R313-25-24 and 25-26 for the segregation and disposal of waste and for the design and operation of a land disposal facility on a specific basis, if it finds reasonable assurance of compliance with the performance objectives of R313-25.

R313-25-28. Institutional Requirements.

(1) Land Ownership. Disposal of waste received from other persons may be permitted only on land owned in fee by the Federal or a State government.

(2) Institutional Control. The land owner or custodial agency shall conduct an institutional control program to physically control access to the disposal site following transfer of control of the disposal site from the disposal site operator. The institutional control program shall also include, but not be limited to, conducting an environmental monitoring program at the disposal site, periodic surveillance, minor custodial care, and other equivalents as determined by the Executive Secretary, and administration of funds to cover the costs for these activities. The period of institutional controls will be determined by the Executive Secretary, but institutional controls may not be relied upon for more than 100 years following transfer of control of the disposal site to the owner.

R313-25-30. Applicant Qualifications and Assurances.

The applicant shall show that it either possesses the necessary funds, or has reasonable assurance of obtaining the necessary funds, or by a combination of the two, to cover the estimated costs of conducting all licensed activities over the planned operating life of the project, including costs of construction and disposal.

R313-25-31. Funding for Disposal Site Closure and Stabilization.

(1) The applicant shall provide assurances prior to the commencement of operations that sufficient funds will be available to carry out disposal site closure and stabilization, including:

(a) decontamination or dismantlement of land disposal facility structures, and

(b) closure and stabilization of the disposal site so that following transfer of the disposal site to the site owner, the need for ongoing active maintenance is eliminated to the extent practicable and only minor custodial care, surveillance, and monitoring are required. These assurances shall be based on Executive Secretary approved cost estimates reflecting the Executive Secretary approved plan for disposal site closure and stabilization. The applicant's cost estimates shall take into account total costs that would be incurred if an independent contractor were hired to perform the closure and stabilization work.

(2) In order to avoid unnecessary duplication and expense, the Executive Secretary will accept financial sureties that have been consolidated with earmarked financial or surety arrangements established to meet requirements of Federal or other State agencies or local governmental bodies for decontamination, closure, and stabilization. The Executive Secretary will accept these arrangements only if they are considered adequate to satisfy the requirements of R313-25-31 and if they clearly identify that the portion of the surety which covers the closure of the disposal site is clearly identified and committed for use in accomplishing these activities.

(3) The licensee's financial or surety arrangement shall be submitted annually for review by the Executive Secretary to assure that sufficient funds will be available for completion of the closure plan.

(4) The amount of the licensee's financial or surety arrangement shall change in accordance with changes in the predicted costs of closure and stabilization. Factors affecting closure and stabilization cost estimates include inflation, increases in the amount of disturbed land, changes in engineering plans, closure and stabilization that have already been accomplished, and other conditions affecting costs. The financial or surety arrangement shall be sufficient at all times to cover the costs of closure and stabilization of the disposal units that are expected to be used before the next license renewal.

(5) The financial or surety arrangement shall be written for a specified period of time and shall be automatically renewed unless the person who issues the surety notifies the Executive Secretary; the beneficiary, the site owner; and the principal, the licensee, not less than 90 days prior to the renewal date of its intention not to renew. In such a situation, the licensee shall submit a replacement surety within 30 days after notification of cancellation. If the licensee fails to provide a replacement surety acceptable to the Executive Secretary, the beneficiary may collect on the original surety.

(6) Proof of forfeiture shall not be necessary to collect the surety so that, in the event that the licensee could not provide an

acceptable replacement surety within the required time, the surety shall be automatically collected prior to its expiration. The conditions described above shall be clearly stated on surety instruments.

(7) Financial or surety arrangements generally acceptable to the Executive Secretary include surety bonds, cash deposits, certificates of deposit, deposits of government securities, escrow accounts, irrevocable letters or lines of credit, trust funds, and combinations of the above or other types of arrangements as may be approved by the Executive Secretary. Self-insurance, or an arrangement which essentially constitutes self-insurance, will not satisfy the surety requirement for private sector applicants.

(8) The licensee's financial or surety arrangement shall remain in effect until the closure and stabilization program has been completed and approved by the Executive Secretary, and the license has been transferred to the site owner.

R313-25-32. Financial Assurances for Institutional Controls.

(1) Prior to the issuance of the license, the applicant shall provide for Executive Secretary approval, a binding arrangement, between the applicant and the disposal site owner that ensures that sufficient funds will be available to cover the costs of monitoring and required maintenance during the institutional control period. The binding arrangement shall be reviewed annually by the Executive Secretary to ensure that changes in inflation, technology, and disposal facility operations are reflected in the arrangements.

(2) Subsequent changes to the binding arrangement specified in R313-25-32(1) relevant to institutional control shall be submitted to the Executive Secretary for prior approval.

R313-25-33. Maintenance of Records, Reports, and Transfers.

(1) Licensees shall maintain records and make reports in connection with the licensed activities as may be required by the conditions of the license or by the rules and orders of the Executive Secretary.

(2) Records which are required by these rules or by license conditions shall be maintained for a period specified by the appropriate rules or by license condition. If a retention period is not otherwise specified, these records shall be maintained and transferred to the officials specified in R313-25-33(4) as a condition of license termination unless the Executive Secretary otherwise authorizes their disposition.

(3) Records which shall be maintained pursuant to R313-25 may be the original or a reproduced copy or microfilm if this reproduced copy or microfilm is capable of producing copy that is clear and legible at the end of the required retention period.

(4) Notwithstanding R313-25-33(1) through (3), copies of records of the location and the quantity of wastes contained in the disposal site shall be transferred upon license termination to the chief executive of the nearest municipality, the chief executive of the county in which the facility is located, the county zoning board or land development and planning agency, the State Governor, and other state, local, and federal governmental agencies as designated by the Executive Secretary at the time of license termination.

(5) Following receipt and acceptance of a shipment of waste, the licensee shall record the date that the shipment is received at the disposal facility, the date of disposal of the waste, a traceable shipment manifest number, a description of any engineered barrier or structural overpack provided for disposal of the waste, the location of disposal at the disposal site, the condition of the waste packages as received, discrepancies between the materials listed on

the manifest and those received, the volume of any pallets, bracing, or other shipping or onsite generated materials that are contaminated, and are disposed of as contaminated or suspect materials, and evidence of leakage or damaged packages or radiation or contamination levels in excess of limits specified in U.S. Department of Transportation and Executive Secretary regulations or rules. The licensee shall briefly describe repackaging operations of the waste packages included in the shipment, plus other information required by the Executive Secretary as a license condition.

(6) Licensees authorized to dispose of waste received from other persons shall file a copy of their financial report or a certified financial statement annually with the Executive Secretary in order to update the information base for determining financial qualifications.

(7)(a) Licensees authorized to dispose of waste received from other persons, pursuant to R313-25, shall submit annual reports to the Executive Secretary. Reports shall be submitted by the end of the first calendar quarter of each year for the preceding year.

(b) The reports shall include:

(i) specification of the quantity of each of the principal contaminants released to unrestricted areas in liquid and in airborne effluents during the preceding year;

(ii) the results of the environmental monitoring program;

(iii) a summary of licensee disposal unit survey and maintenance activities;

(iv) a summary, by waste class, of activities and quantities of radionuclides disposed of;

(v) instances in which observed site characteristics were significantly different from those described in the application for a license; and

(vi) other information the Executive Secretary may require.

(c) If the quantities of waste released during the reporting period, monitoring results, or maintenance performed are significantly different from those predicted, the report shall cover this specifically.

(8) In addition to the other requirements in R313-25-33, the licensee shall store, or have stored, manifest and other information pertaining to receipt and disposal of radioactive waste in an electronic recordkeeping system.

(a) The manifest information that must be electronically stored is:

(i) that required in Appendix G of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated into these rules by reference, with the exception of shipper and carrier telephone numbers and shipper and consignee certifications; and

(ii) that information required in R313-25-33(5).

(b) As specified in facility license conditions, the licensee shall report the stored information, or subsets of this information, on a computer-readable medium.

R313-25-34. Tests on Land Disposal Facilities.

Licensees shall perform, or permit the Executive Secretary to perform, any tests the Executive Secretary deems appropriate or necessary for the administration of the rules in R313-25, including, but not limited to, tests of;

(1) wastes;

(2) facilities used for the receipt, storage, treatment, handling or disposal of wastes;

(3) radiation detection and monitoring instruments; or

(4) other equipment and devices used in connection with the receipt, possession, handling, treatment, storage, or disposal of waste.

R313-25-35. Executive Secretary Inspections of Land Disposal Facilities.

(1) Licensees shall afford to the Executive Secretary, at reasonable times, opportunity to inspect waste not yet disposed of, and the premises, equipment, operations, and facilities in which wastes are received, possessed, handled, treated, stored, or disposed of.

(2) Licensees shall make available to the Executive Secretary for inspection, upon reasonable notice, records kept by it pursuant to these rules. Authorized representatives of the Executive Secretary may copy and take away copies of, for the Executive Secretary's use, any records required to be kept pursuant to R313-25.

KEY: radiation, radioactive waste disposal

~~March 10, 2000~~ 2003

Notice of Continuation October 10, 2001

19-3-104

19-3-108



Human Services, Administration, Administrative Services, Licensing

R501-2

Core Standards

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26071

FILED: 03/06/2003, 12:49

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment provides clearer and more defined explanation of rules.

SUMMARY OF THE RULE OR CHANGE: The rule is reorganized to make the content clearer, and revised number and portions have been rewritten or deleted to eliminate duplication and correct other changes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-2-106

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** Other than for the cost of copying the revised rule, there will be no additional cost or savings to the State Budget.

❖ **LOCAL GOVERNMENTS:** Local governments have no additional costs because the changes in the rule have been more for clarification and broader definition of the already existing rule and other than the facilities complying with local government's regulations, there is no additional costs to local governments.

❖OTHER PERSONS: The changes in this rule will not produce additional costs or savings to other persons because the rule changes are more for clarification and expanded definition and not for new physical changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the changes made in this rule are more for clarification and better definition of terms, it was determined that there would be no additional cost or savings to the affected persons unless they opt to make changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: With the type of changes made with this rule, there will not be a fiscal impact on businesses.

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

HUMAN SERVICES
ADMINISTRATION, ADMINISTRATIVE SERVICES,
LICENSING
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jan Bohi at the above address, by phone at 801-538-4153, by FAX at 801-538-4553, or by Internet E-mail at jbohi@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 05/01/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/02/2003

AUTHORIZED BY: Ken Stettler, Director

R501. Human Services, Administration, Administrative Services, Licensing.

R501-2. Core Rules.

R501-2-1. Definition.

Core Rules are required for Human Service Programs, listed in R501-2-14. Where there is duplication of review by another oversight agency, the Office of Licensing, shall accept that documentation as proof of compliance. Pursuant to 62A-2-106, the Office of Licensing will not enforce rules for licensees under contract to a Division in the Department of Human Services in the following areas:

- A. the administration and maintenance of client and service records; and
- B. staff qualifications; and
- C. staff to client ratios.

R501-2-2. Program Administration.

A. The program shall have a written statement of purpose to include the following:

1. program philosophy,
2. description of long and short term goals, this does not apply to social detoxification or child placing adoption agencies,
3. description of the services provided,

4. the population to be served,
5. fee policy,
6. participation of consumers in activities unrelated to treatment plans, and

7. program policies and procedures which shall be submitted prior to issuance of an initial license.

B. Copies of the above statements shall be available at all times to the Office of Licensing upon request. General program information shall be available to the public.

C. The program shall have a written quality assurance plan. Implementation of the plan shall be documented.

D. The program shall have clearly stated guidelines and appropriate administrative procedures, to include the following:

1. program management,
2. maintenance of complete, accurate and accessible records, and
3. record retention.

E. The governing body, program operators, management, employees, consultants, volunteers, and interns shall read, understand, follow and sign a copy of the current Department of Human Services Provider Code of Conduct.

F. The program shall comply with State and Federal laws regarding abuse reporting in accordance with 62A-4a-403 and 62A-3-302, and shall post copies of these laws in a conspicuous place within the facility.

G. All programs which serve children or vulnerable adults shall submit identifying information for background screening of all adult persons associated with the licensee and board members who have access to children and vulnerable adults in accordance with R501-14 and R501-18.

H. The program shall comply with all applicable National Interstate Compact Laws.

I. A licensed substance abuse treatment program shall complete the National Survey of Substance Abuse Treatment annually. Substance abuse treatment programs shall also comply with Confidentiality of Alcohol and Drug abuse Patient Records, 42 CFR Part 2.

J. The program's license shall be posted where it is easily read by consumers, staff and visitors. See also R501-1-5-F. The program shall post Civil Rights, License on Notice of Agency Action, abuse and neglect reporting and other notices as applicable.

K. The program shall not handle the major personal business affairs of a consumer without request in writing by the consumer and legal representative.

R501-2-3. Governance.

A. The program shall have a governing body which is responsible for and has authority over the policies, training and monitoring of staff and consumer activities for all phases of the program. The governing body's responsibilities shall include the following:

1. to ensure program policy and procedures compliance,
2. to ensure continual compliance with relevant local, state and federal requirements,
3. to notify the Office of Licensing within 30 days of changes in program administration and purpose.
4. to ensure that the program is fiscally and operationally sound, by providing documentation by a financial professional that the program is a "going concern",
5. to ensure that the program has adequate staffing as identified on the organizational chart,

6. to ensure that the program has general liability insurance, professional liability insurance as appropriate, vehicle insurance for transport of consumers, and fire insurance, and

7. for programs serving youth, the program director or designee shall meet with the Superintendent or designee of the local school district at the time of initial licensure, and then again each year as the program renews its license to complete the necessary student forms including youth education forms.

B. The governing body shall be one of the following:

1. a Board of Directors in a non-profit organization; or
2. commissioners or appointed officials of a governmental unit; or
3. Board of Directors or individual owner or owners of a for-profit organization.

C. The program shall have a list of members of the governing body, indicating name, address and term of membership.

D. The program shall have an organization chart which identifies operating units of the program and their inter-relationships. The chart shall define lines of authority and responsibility for all program staff and identifies by name the staff person who fills each position on the chart.

E. When the governing body is composed of more than one person, the governing body shall establish written by-laws, and shall hold formal meetings at least twice a year, Child Placing Agencies must meet at least quarterly, maintain written minutes, which shall be available for review by the Office of Licensing, to include the following:

1. attendance,
2. date,
3. agenda items, and
4. actions.

R501-2-4. Statutory Authority.

A. A publicly operated program shall document the statutory basis for existence.

B. A privately operated program shall document its ownership and incorporation.

R501-2-5. Record Keeping.

The program shall have, a written record for each consumer to include the following:

A. Demographic information to include Medicaid number as required,

B. Biographical information,

C. Pertinent background information, including the following:

1. personal history, including social, emotional, psychological and physical development,
2. legal status,
3. emergency contact with name, address and telephone number, and
4. photo, as needed

D. Health records of a consumer including the following:

1. immunizations, for children only,
2. medication,
3. physical examinations, dental, and visual examinations, and
4. other pertinent health records and information,

E. Signed consent forms for treatment and signed Release of Information form,

F. Copy of consumer's individual treatment or service plan,

G. A summary of family visits and contacts, and

H. A summary of attendance and absences.

R501-2-6. Direct Service Management.

A. Direct service management, as described herein, is not applicable to social detoxification. The program shall have on file for public inspection a written eligibility policy and procedure, approved by a licensed clinical professional to include the following:

1. legal status,
2. age and sex of consumer,
3. consumer needs or problems best addressed by program,
4. program limitations, and
5. appropriate placement.

B. The program shall have a written admission policy and procedure to include the following:

1. appropriate intake process,
2. age groupings as approved by the Office of Licensing,
3. pre-placement requirements,
4. self-admission,
5. notification of legally responsible person, and
6. reason for refusal of admission to include a written, signed statement.

C. Intake evaluation.

1. At the time of intake an assessment shall be conducted to evaluate health and family history, medical, social, psychological and, as appropriate, developmental, vocational and educational factors.

2. In emergency situations which necessitate immediate placement, the intake evaluation shall be completed within seven days of admission.

3. All methods used in evaluating a consumer shall consider age, cultural background, dominant language, and mode of communication.

D. A written agreement, developed with the consumer, and the legally responsible person if applicable, shall be completed, signed by all parties, and kept in the consumer's record with copies available to involved persons. It shall include the following:

1. rules of program,
2. consumer and family expectations,
3. services to be provided and cost of service,
4. authorization to serve and to obtain emergency care for the consumer,
5. arrangements regarding absenteeism, visits, vacation, mail, gifts, and telephone calls, when appropriate, and
6. sanctions and consequences.

E. Consumer treatment plan shall be individualized, as applicable, [A]according to the following:

1. A staff member shall be assigned to each consumer having responsibility and authority for development, implementation, and review of the plan.

2. The plan shall include the following:

- a. findings of intake evaluation and assessment,
- b. measurable long and short term goals and objectives,
 - 1) goals or objectives clearly derived from assessment information,
 - 2) goals or objectives stated in terms of specific observable changes in behavior, skills, attitudes or circumstances,
 - 3) evidence that consumer input was integrated where appropriate in identifying goals and objectives, and
 - 4) evidence of family involvement in treatment plan unless clinically contraindicated,

- c. specification of daily activities, services, and treatment, and
 - d. methods for evaluation.
3. Treatment plans shall be developed within 30 days of consumer's admission by a treatment team and reviewed by a clinical professional if applicable. Thereafter treatment plans shall be reviewed by the licensed clinical professional if applicable as often as stated in the treatment plan.
4. All persons working directly with the consumer shall be appropriately informed of the individual treatment plan.
5. Reports on the progress of the consumer shall be available to the applicable division, the consumer, and the legally responsible person.
6. Treatment record entries shall include the following:
- a. identification of program,
 - b. date and duration of services provided,
 - c. description of service provided,
 - d. a description of consumer progress or lack of progress in the achievement of treatment goals or objectives as often as stated in the treatment plan, and
 - e. documentation of review of consumer's record to include the following:
 - 1) signature,
 - 2) title,
 - 3) date, and
 - 4) reason for review.
7. Transfer and discharge
- a. a discharge plan shall identify resources available to consumer.
 - b. the plan shall be written so it can be understood by the consumer or legally responsible party.
 - c. whenever possible the plan shall be developed with consumer's participation, or legally responsible party if necessary. The plan shall include the following:
 - 1) reason for discharge or transfer,
 - 2) adequate discharge plan including aftercare planning,
 - 3) summary of services provided,
 - 4) evaluation of achievement of treatment goals or objectives,
 - 5) signature and title of staff preparing summary, and
 - 6) date of discharge or transfer.
 - d. the program shall have a written policy concerning un[planned discharge.
8. Incident or Crisis Intervention records
- a. the program shall have written policies and procedures which includes: reporting to program management, documentation, and management review of incidents such as deaths of consumers, serious injuries, fights, or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect, unusual incidents, and other situations~~[strip searches and other situations]~~ or circumstances affecting the health, safety, or well-being of consumers.
 - b. records shall include the following:
 - 1) summary information,
 - 2) date, time of emergency intervention,
 - 3) action taken,
 - 4) employees and management responsible and involved,
 - 5) follow up information,
 - 6) list of referrals,
 - 7) signature and title of staff preparing report, and
 - 8) records shall be signed by management staff.
 - c. the report shall be maintained in individual consumer records.

d. when an incident involves abuse, neglect, serious injury or illness, violation of the Provider Code of Conduct or death of a consumer, a program shall:

- 1) notify the Office of Licensing, legally responsible person and any applicable agency which may include law enforcement.
- ~~[— 2) a preliminary written report shall be submitted to the Office of Licensing within 24 hours of the incident.~~

R501-2-7. Behavior Management.

A. The program shall have on file for public inspection a written policy and procedure for the methods of behavior management. These shall include the following:

- 1. definition of appropriate and inappropriate behaviors of consumers,
- 2. acceptable staff responses to inappropriate behaviors, and
- 3. consequences.

B. The policy shall be provided to all staff, and staff shall receive training relative to behavior management at least annually.

C. No management person shall authorize or use, and no staff member shall use, any method designed to humiliate or frighten a consumer.

D. No management person shall authorize or use, and no staff member shall use nor permit the use of physical restraint with the exception of passive physical restraint. Passive physical restraint shall be used only as a temporary means of physical containment to protect the consumer, other persons, or property from harm. Passive physical restraint shall not be associated with punishment in any way.

E. Staff involved in an emergency safety intervention that results in an injury to a resident or staff must meet with the clinical professional to evaluate the circumstances that caused the injury and develop a plan to prevent future injuries.

F. Programs using time out or seclusion methods shall comply with the following:

1. The program will have a written policy and procedure which has been approved by the Office of Licensing to include:

a. Time-out or seclusion is only used when a child's behavior ~~[is disruptive to the child's]~~ substantially interferes with their ability [to learn] to participate appropriately, or to function appropriately with other children or the activity. It shall not be used for punishment or as a substitute for other developmentally appropriate positive methods of behavior management.

b. Time-out or seclusion shall be documented in detail and provide a clear understanding of the incident which resulted in the child being placed in that time out or seclusion.

c. If a child is placed in time out or seclusion more than twice in any twenty-four hour period, a review is conducted by the clinical professional to determine the suitability of the child remaining in the program.

d. Any one time out or seclusion shall not exceed 4 hours in duration.

e. Staff is required to maintain a visual contact with a child in time out or seclusion at all times.

f. If there is any type of emergency such as a fire alarm, or evacuation notification, children in time out or seclusion shall follow the safety plan.

g. A child placed in time out or seclusion shall not be in possession of belts, matches, weapons or any other potentially harmful objects or materials that could present a risk of harm to the child.

2. Time out or seclusion areas shall comply with the following:

a. Time out or seclusion rooms shall not have locking capability.

b. Time out or seclusion rooms shall not be located in closets, bathrooms, or unfinished basement, attic's or locked boxes.

c. A time out or seclusion room is not a bedroom, and temporary beds, or mattresses in these areas are not allowed. Time out and seclusion shall not preclude a child's need for sleep, or normal scheduled sleep period.

d. All time out or seclusion rooms shall measure at least 75 square feet with a ceiling height of at least 7 feet. They shall have either natural or mechanical ventilation and be equipped with a break resistant window, mirror or camera that allows for full observation of the room. Seclusion rooms shall have no hardware, equipment, or furnishings that obstruct observation of the child, or that present a physical hazard or a suicide risk. Rooms used for time out or seclusion shall be inspected and approved by the local fire department.

G. The program's licensed clinical professional shall be responsible for supervision of the behavior management procedure.

R501-2-8. Rights of Consumers.

A. The program shall have a written policy for consumer rights to include the following:

1. privacy of information and privacy for both current and closed records,

2. reasons for involuntary termination and criteria for re-admission to the program,

3. freedom from potential harm or acts of violence to consumer or others,

4. consumer responsibilities, including household tasks, privileges, and rules of conduct,

5. service fees and other costs,

6. grievance and complaint procedures,

7. freedom from discrimination,

8. the right to be treated with dignity,

9. the right to communicate by telephone or in writing with family, attorney, physician, clergyman, and counselor or case manager except when contraindicated by the licensed clinical professional,

10. a list of people whose visitation rights have been restricted through the courts,

11. the right to send and receive mail providing that security, and general health and safety requirements are met,

12. defined smoking policy in accordance with the Utah Clean Air Act, and

13. statement of maximum sanctions and consequences, reviewed and approved by the Office of Licensing.

B. The consumer shall be informed of this policy to his or her understanding verbally and in writing. A signed copy shall be maintained in the consumer record.

R501-2-9. Personnel Administration.

A. The program shall have written personnel policies and procedures to include the following:

1. employee grievances,

2. lines of authority,

3. orientation and on-going training,

4. performance appraisals,

5. rules of conduct, and

6. sexual and personal harassment.

B. The program shall have a director, appointed by the governing body, who shall be responsible for management of the program and facility. The director or designated management person shall be available at all times during operation of the program.

C. The program shall maintain a personnel file on site for each employee to include the following:

1. application for employment,

2. applicable credentials and certifications,

3. initial medical history if directed by the governing body,

4. tuberculin test if directed by the governing body,

5. food handler permit, where required by local health authority,

6. training record,

7. annual performance evaluations,

8. I-9 Form completed as applicable,

9. comply with the provisions of R501-14 and R501-18 for background screening, and

10. signed copy of the current Department of Human Services Provider Code of Conduct.

D. The program shall follow a written staff to consumer ratio which shall meet specific consumer and program needs. The staff to consumer ratio shall meet or exceed the requirements set forth in the applicable categorical rules as found in R501-16, R501-17, R-501-19, R501-20, R501-21 and R501-22.

E. The program shall employ or contract with trained or qualified staff to perform the following functions:

1. administrative,

2. fiscal,

3. clerical,

4. housekeeping, maintenance, and food service,

5. direct consumer service, and

6. supervisory.

F. The program shall have a written job description for each position which includes a specific statement of duties and responsibilities and the minimum level of education, training and work experience required.

G. Treatment shall be provided or supervised by licensed professional staff, whose qualifications are determined or approved by the governing body, in accordance with state law.

H. The governing body shall ensure that all staff are certified and licensed as legally required.

I. The program shall have access to a medical clinic or a physician licensed to practice medicine in the State of Utah.

J. The program shall provide interpreters for consumers or refer consumers to appropriate resources as necessary to communicate with consumers whose primary language is not English.

K. The program shall retain the personnel file of an employee after termination of employment in accordance with accepted personnel practices.

L. A program using volunteers, substitutes, or student interns shall have a written plan to include the following:

1. direct supervision by a program staff,

2. orientation and training in the philosophy of the program, the needs of consumers, and methods of meeting those needs,

3. background screening,

4. a record maintained with demographic information, and

5. [S]signed copy of the current Department of Human Services Provider Code of Conduct.

M. Staff Training

1. staff members shall be trained in all policies of the program including the following:

- a. orientation in philosophy, objectives, and services,
- b. emergency procedures,
- c. behavior management,
- d. current program policy and procedures, and
- e. other relevant subjects.

2. Staff shall have completed and remain current in a certified first aid and CPR, such as or comparable to American Red Cross.

3. Staff shall have current food handlers permit as required by local health authority.

4. Training shall be documented and maintained on-site.

R501-2-10. Infectious Disease.

The program shall have policies and procedures designed to prevent or control infectious and communicable diseases in the facility in accordance with local, state and federal health standards.

R501-2-11. Emergency Plans.

A. The program shall have a written plan of action for disaster and casualties to include the following:

1. designation of authority and staff assignments,
2. plan for evacuation,
3. transportation and relocation of consumers when necessary, and
4. supervision of consumers after evacuation or relocation.

B. The program shall educate consumers on how to respond to fire warnings and other instructions for life safety including evacuation.

C. The program shall have a written plan which personnel follow[s] in medical emergencies and arrangements for medical care, including notification of consumer's physician and nearest relative or guardian.

R501-2-12. Safety.

A. Fire drills in non-outpatient programs shall be conducted at least quarterly and documented. Notation of inadequate response shall be documented.

B. The program shall provide access to an operable 24[-]-hour telephone service. Telephone numbers for emergency assistance, i.e., 911 and poison control, shall be posted.

C. The program shall have an adequately supplied first aid kit in the facility, such as recommended by American Red Cross.

D. All persons associated with the program having access to children or vulnerable adults who have firearms or ammunition shall assure that they are inaccessible to consumers at all times. Firearms and ammunition that are stored together shall be kept securely locked in security vaults or locked cases, not in glass fronted display cases. Firearms that are stored in display cases shall be rendered inoperable with trigger locks, bolts removed, or other disabling methods. Ammunition for those firearms shall be kept securely locked in a separate location. This does not restrict constitution or statutory rights regarding concealed weapons permits, pursuant to UCA 53-5-701 et seq.

R501-2-13. Transportation.

A. The program shall have written policy and procedures for transporting consumers.

B. In each program or staff vehicle used to transport consumers, there shall be emergency information which includes at

a minimum the name, address and phone number of the program and an emergency telephone number.

C. The program shall have means, or make arrangement for transportation in case of emergency.

D. Drivers of vehicles shall have a valid drivers license and follow safety requirements of the State.

E. Each vehicle shall be equipped with an adequately supplied first aid kit, such as recommended by American Red Cross.

R501-2-14. Categorical Rules.

In addition to Core Rules, Categorical Rules are specific regulations which must be met for the following:

- A. Child Placing Agencies, R501-7,
- B. Day Treatment, R501-20,
- C. Intermediate Secure Treatment Programs for Minors, R501-16,
- D. Outdoor Youth Programs, R501-8,
- E. Outpatient Treatment, R501-21,
- F. Outpatient Domestic Violence Perpetrator Treatment, R501-21,
- G. Residential Treatment, R501-19,
- H. Residential Support, R501-22,
- I. Social Detoxification, and R501-11,
- J. Assisted living for DSPD Residential. R710.

R501-2-15. Single Service Program Rules.

Core Rules of the Office of Licensing do not apply to single service programs.

Single services program Rules are the regulations which must be met for the following:

- A. Adult Day Care, which Rules are found in R501-13,
- B. Adult Foster Care, which Rules are found in R501-17[-
and].

**KEY: licensing, human services
2003**

**Notice of Continuation November 25, 2002
62A-2-101 et seq.**



**Insurance, Administration
R590-126
Individual and Franchise Disability,
Insurance Minimum Standards**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 26111

FILED: 03/14/2003, 15:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being revised for a number of reasons: 1) it has been 10 years since substantive changes have been made to the rule; 2) the insurance industry has requested the update; 3) minimum benefit levels are being raised to correspond with rising health care costs; 4) the rule is being made to more closely correspond with National Association of Insurance

Commissioner's (NAIC) Model Regulation on minimum standards; and 5) the rule is being broadened to encompass more than just individual insurance plans.

SUMMARY OF THE RULE OR CHANGE: There is only one thing we are losing in the repeal of the original rule and that is the limitation of this rule to individual and franchise health insurance policies. The major changes being made in the new rule are: 1) minimum benefit levels are being raised to correspond to rising health care costs; 2) new definitions are being added, i.e., "scientific evidence", "medical necessities", "accident", and "accidental injury"; 3) the probationary period for specific diseases and conditions is being extended from 6 to 12 months; and 4) the new rule clarifies that dental and vision are to be included in insurer's minimum standards, and an outline of coverage is to be added for each benefit.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201, 31A-2-202, 31A-23-312, 31A-22-605, 31A-22-623, 31A-22-626, 31A-23-302, and 31A-26-301

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The proposed changes to this rule will increase the department's workload due to the need to review policy forms that insurers will be required to refile with the department. Approximately 600 health insurers may be affected by the changes in the rule and will need to change and file policy forms, but there will no longer be a filing fee required.

❖LOCAL GOVERNMENTS: The changes to this rule will not affect local government since the rule only applies to the relationship between health insurers and the department and their insureds.

❖OTHER PERSONS: Approximately 600 health insurers may be affected by the changes to this rule and will need to change and file policy forms, but there will no longer be a filing fee required. Some minimum benefit requirements in the rule have been increased but most health insurers have already been providing increased benefits to their insureds. As a result, there should be no significant increase in costs to the insurance companies or their insureds.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Approximately 600 health insurers may be affected by the changes to this rule and will need to change and file policy forms, but there will no longer be a filing fee required. Some minimum benefit requirements in the rule have been increased but most health insurers have already been providing these increased benefits to their insureds. As a result, there should be no significant increase in costs to the insurance companies or their insureds.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Minimum benefit levels are being raised to correspond with rising health care costs. Most health insurers have already been providing these increased benefits to their insureds and as a result there should be no significant increased costs to health insurers.

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

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@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 05/01/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 4/14/2003 at 10:00 AM, State Office Building (behind the State Capitol, Rm 1112, Salt Lake City, UT).

THIS RULE MAY BECOME EFFECTIVE ON: 05/02/2003

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

~~**R590-126. Individual and Franchise Disability Insurance, Minimum Standards.**~~

~~**R590-126-1. Authority.**~~

~~— This rule is issued by the Insurance Commissioner pursuant to Subsection 31A-2-201(3)(a) authorizing rules to implement the Insurance Code and~~

~~— Section 31A-22-605 requiring the commissioner to adopt rules to establish minimum standards for disclosure in the sale of, and benefits to be provided by, Individual and Franchise Disability Insurance.~~

~~**R590-126-2. Purpose and Scope.**~~

~~— A. Purpose. The purpose of this rule is to provide reasonable standardization and simplification of terms and coverages of insurance policies in order to facilitate public understanding and comparison and to prohibit provisions which may be misleading or confusing in connection either with the purchase of such coverages or with the settlement of claims, and to provide for full disclosure in the sale of such insurance.~~

~~— B. Scope. This rule shall apply to all individual and franchise disability insurance policies, including health maintenance organization contracts, and subscriber contracts of hospital, medical and dental service corporations. Individual conversion policies shall be subject to this rule except where Section 31A-22-701, et. seq., U.C.A., requires otherwise. A policy or certificate characterized as "group insurance," but marketed to individuals, shall be subject to this rule. The rule shall apply only to coverage issued after the effective date of the rule.~~

~~**R590-126-3. Definitions.**~~

~~— A. In addition to the definitions of Sections 31A-1-301 and 31A-22-605(2), U.C.A., the following definitions shall apply for the purposes of this rule:~~

— 1. "Accident" or "Accidental Injury."

a. The definition of these terms may not be more restrictive than the following: "Injury or injuries, for which benefits are provided, means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause and occurs while insurance coverage is in force."

b. The definition shall employ "result" language and may not include the phrase "Accidental Means," or words which establish an accidental means test, or use words such as "external, violent, visible wounds" or similar words of description or characterization.

c. Unless otherwise prohibited by law, the definition may exclude injuries for which benefits are paid under worker's compensation, an employer's liability or similar law, or a motor vehicle no-fault plan.

— 2. "Adult Day Care" shall mean a licensed group program designed to meet the needs of functionally impaired adults for a period of fewer than 24 hours per day. Such care may be provided by persons without nursing skills or qualification.

— 3. "Certificate of Completion" shall mean a document issued by the Utah Board of Education to a person who completes an approved course of study not leading to a diploma, or to one who passes a challenge for that same course of study, or to one whose out-of-state credentials and certificate are acceptable to the Board.

— 4. "Cold-lead advertising" shall mean making use, directly or indirectly, of any method of marketing which fails to disclose, in a conspicuous manner, that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

— 5. "Complications of pregnancy" shall mean diseases or conditions the diagnoses of which are distinct from pregnancy but are adversely affected or caused by pregnancy and not associated with a normal pregnancy.

a. "Complications of Pregnancy" include acute nephritis, nephrosis, cardiac decompensation, ectopic pregnancy which is terminated, a spontaneous termination of pregnancy when a viable birth is not possible, puerperal infection, eclampsia and toxemia.

b. This definition does not include false labor, occasional spotting, doctor-prescribed rest during the period of pregnancy, morning sickness, and conditions of comparable severity associated with management of a difficult pregnancy.

— 6. "Cosmetic Surgery" or "Reconstructive Surgery" shall mean any surgical procedure performed primarily to improve physical appearance.

a. This definition does not include surgery which is necessary:

- i. To correct damage caused by injury or sickness;
- ii. For reconstructive treatment following medically necessary surgery;
- iii. To provide or restore normal bodily function; or
- iv. To correct a congenital disorder that has resulted in a functional defect.

b. This provision does not require coverage for preexisting conditions otherwise excluded.

— 7. "Custodial Care" shall mean a Plan of Care which does not provide treatment for sickness or injury, but is only for the purpose of meeting personal needs and maintaining physical condition when there is no prospect of effecting remission or restoration of the patient to a condition in which care would not be required. Such care may be provided by persons without nursing skills or qualifications. If a Nursing Care Facility is only providing custodial or residential care, the level of care may be so characterized.

— 8. "Elimination Period" or "Waiting Period" shall mean the specified number of consecutive days at the start of each period of disability for which no benefits are payable.

— 9. "Experimental Treatment" is defined as medical treatment, services, supplies, medications, drugs, or other methods of therapy or medical practices which are not accepted as a valid course of treatment by your state's medical association, the U.S. Food and Drug Administration, the American Medical Association, or the Surgeon General.

— 10. "Health Care Expenses" shall mean expenses of health maintenance organizations associated with the delivery of health care services which are analogous to incurred losses of insurers. Such expenses may not include:

- a. Home office and overhead costs;
- b. Advertising costs;
- c. Commissions and other acquisition costs;
- d. Taxes;
- e. Capital costs;
- f. Administrative costs;
- g. Claims processing costs.

— 11. "High pressure tactics" shall mean employing any method of marketing which induces or attempts to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or excessive pressure.

— 12. "Home Health Agency" shall mean a public agency or private organization, or subdivision of a health care facility, duly licensed and operating within the scope of such license.

— 13. "Home Health Aide" shall mean a person who obtains a Certificate of Completion, as required by law, which allows performance of health care and other related services under the supervision of a Registered Nurse from the Home Health Agency, or performance of simple procedures as an extension of physical, speech, or occupational therapy under the supervision of licensed therapists.

— 14. "Home Health Care" shall mean services provided by a Home Health Agency.

— 15. "Homemaker" shall mean a person who cares for the environment in the home through performance of duties such as housekeeping, meal planning and preparation, laundry, shopping and errands.

— 16. "Homemaker/Home Health Aide" shall mean a person who has obtained a Certificate of Completion, as required by law, which allows performance of both Homemaker and Home Health Aide services, and who provides health care and other related services under the supervision of a Registered Nurse from the Home Health Agency or under the supervision of licensed therapists.

— 17. "Hospice" shall mean a program of care for the terminally ill and their families which occurs in a home or in a health care facility and which provides medical, palliative, psychological, spiritual, or supportive care and treatment.

— 18. "Hospital" shall mean a facility duly licensed and operating within the scope of such license. This definition may not preclude the requirement of medical necessity of hospital confinement or other treatment.

— 19. "Intermediate Nursing Care" shall mean nursing services provided by, or under the supervision of, a Registered Nurse (R.N.). Such a Plan of Care shall be for the purpose of treating the condition for which confinement is required.

— 20. "Medically Necessary" shall mean treatment or services which are necessary and appropriate for the diagnosis or treatment of an illness or injury based on generally accepted current medical practice.

—21. "Medicare" shall be defined in any hospital, surgical or medical expense policy which relates its coverage to eligibility for Medicare or Medicare benefits. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Laws 89-97, and Amendments Thereto, Popularly Known as the Health Insurance for the Aged Act, as Enacted by the Eighty-Ninth Congress of the United States of America," or words of similar import.

—22. "Medicare Supplement Policy" shall mean an individual, franchise, or group policy of disability insurance which is advertised, marketed, or primarily designed as a supplement to reimbursements under Medicare for hospital, medical, or surgical expenses of persons eligible for Medicare.

—23. "Mental or Nervous Disorders" may not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or any other mental or emotional disease or disorder which does not have a demonstrable organic cause.

—24. "Nurse" may be defined so that the description of nurse is restricted to a type of nurse, such as Registered Nurse (R.N.), or Licensed Practical Nurse (L.P.N.). If the words "Nurse" or "Registered Nurse" are used without specific instruction, then the use of such terms requires the insurer to recognize the services of any individual who qualifies under such terminology in accordance with applicable statutes or administrative rules.

—25. "Nurse, Licensed Practical" shall mean a person who is registered and licensed to practice as a Practical Nurse.

—26. "Nurse, Registered" shall mean any person who is registered and licensed to practice as a Registered Nurse.

—27. "Nursing Care" shall mean assistance provided for the health care needs of sick or disabled individuals, by or under the direction of licensed nursing personnel.

—28. "Nursing Care Facility," or "Nursing Home," shall mean a facility duly licensed and operating within the scope of such license.

—29. "One Period of Confinement" shall mean consecutive days of in-hospital service received as an inpatient, or successive confinements when discharge from and readmission to the hospital occurs within a period of time of not more than 90 days or three times the maximum number of days of in-hospital coverage provided by the policy up to a maximum of 180 days.

—30. "Partial Disability" shall be defined in relation to the individual's inability to perform one or more but not all of the "major," "important," or "essential" duties of employment or occupation or may be related to a "percentage" of time worked or to a "specified number of hours" or to "compensation." Where a policy provides total disability benefits and partial disability benefits, only one elimination period may be required.

—31. "Personal Care" shall mean assistance, under a Plan of Care by a Home Health Agency, provided to persons in activities of daily living.

—32. "Personal Care Aide" shall mean a person who obtains a Certificate of Completion, as required by law, which allows that person to assist in the activities of daily living and emergency first aid, and who must be supervised by a Registered Nurse from the Home Health Agency.

—33. "Physician" may be defined by including words such as "duly qualified physician" or "duly licensed physician." The use of such terms requires an insurer to recognize and to accept, to the extent of its obligation under the contract, all providers of medical care and treatment when such services are within the scope of the provider's

licensed authority and are provided pursuant to applicable laws as required by Section 31A-22-618, U.C.A.

—34. "Plan of Care" shall mean a written plan based on assessment data or physician orders that identifies the patient's needs, who will provide needed services and how often, treatment goals, and anticipated outcomes.

—35. "Preexisting Condition" may not be defined to be more restrictive than the following:

—a. Specified Disease Insurance. "Preexisting condition" shall mean a condition which first manifested itself within six months prior to the effective date of coverage or which was diagnosed by a physician at any time prior to the effective date of coverage.

—b. Other Health Coverage. "Preexisting condition" shall mean the existence of symptoms which would cause an ordinarily prudent person to seek diagnosis, care or treatment within a five-year period preceding the effective date of the coverage of the insured person or a condition for which medical advice or treatment was recommended by a physician or received from a physician within a five-year period preceding the effective date of the coverage of the insured person.

—36. "Probationary Period" shall mean the period of time following the date of issuance or effective date of the policy before coverage begins for all or certain conditions.

—37. "Residential Health Care Facility" shall mean a publicly or privately operated and maintained facility providing personal care to residents who require protected living arrangements.

—38. "Residual Disability" shall be defined in relation to the individual's reduction in earnings and may be related either to the inability to perform some part of the "major," "important," or "essential duties" of employment or occupation, or to the inability to perform all usual business duties for as long as is usually required. A policy which provides for residual disability benefits may require a qualification period, during which the insured shall be continuously totally disabled before residual disability benefits are payable. The qualification period for residual benefits may be longer than the elimination period for total disability. In lieu of the term "residual disability," the insurer may use "proportionate disability" or other term of similar import which in the opinion of the commissioner adequately and fairly describes the benefit.

—39. "Respite Care" shall mean provision of temporary support to the primary caregiver of the aged, disabled, or handicapped individual insured, by taking over the tasks of that person for a limited period of time. The insured may receive care in the home, or other appropriate community location, or in an appropriate institutional setting.

—40. "Sickness."

—a. The definition of this term may not be more restrictive than the following: "Sickness means sickness or disease of an insured person which manifests itself after the effective date of insurance and while the insurance is in force."

—b. A definition of sickness may provide for a probationary period which may not exceed 30 days from the effective date of the coverage of the insured person.

—c. The definition may be further modified to exclude sickness or disease for which benefits are paid under any worker's compensation, occupational disease, employer's liability or similar law.

—41. "Skilled Nursing Care" shall mean nursing services provided by, or under the supervision of, a Registered Nurse (R.N.). Such a Plan of Care shall be for the purpose of treating the condition for which the confinement is required and not for the purpose of providing Intermediate or Custodial Care.

—42. "Therapist" may be defined as a professionally trained or duly licensed or registered person, such as a physical therapist, occupational therapist, or speech therapist, who is skilled in applying treatment techniques and procedures under the general direction of a physician.

—43. "Total Disability:"

— a. A general definition of total disability may not be more restrictive than one requiring that the individual who is totally disabled not be engaged in any employment or occupation for which he is or becomes qualified by reason of education, training or experience; and not, in fact, engaged in any employment or occupation for wage or profit.

— b. Total disability may be defined in relation to the inability of the person to perform duties but may not be based solely upon an individual's inability to:

— i. Perform "any occupation whatsoever," "any occupational duty," or "any and every duty of his occupation," or

— ii. Engage in any training or rehabilitation program.

— c. An insurer may specify the requirement of the complete inability of the person to perform all of the substantial and material duties of his regular occupation or words of similar import.

— d. An insurer may require care by a physician other than the insured or a member of the insured's immediate family.

—44. "Twisting" shall mean knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or attempting to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out another policy of insurance.

—45. "Usual and Customary" shall mean the reasonable, usual and customary charges for services and supplies in the community where such services and supplies were provided.

—46. "Waiting Period" shall mean "Elimination Period."

R590-126-4. General Requirements.

— A. Policy Definitions. No policy subject to this rule may contain definitions respecting the matters defined in Section R590-126-3 unless such definitions comply with the requirements of that section.

— B. Rights of Spouse. The following provisions apply to policies which provide coverage to a spouse of the insured:

— 1. Termination of Spouse Limited. A policy may not provide for termination of coverage of the spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than for nonpayment of premium.

— 2. Spouse as Insured. A policy shall provide that in the event of the insured's death the spouse of the insured shall become the insured.

— 3. Age Determination. The age of the younger spouse shall be used as the basis for meeting the age and durational requirements of the noncancellation or renewal provisions of the policy. However, this requirement may not prevent termination of coverage of the older spouse upon attainment of the stated age limit, e.g., age 65, so long as the policy may be continued in force as to the younger spouse to the age or for the durational period as specified in said definition.

— C. Renewability.

— 1. Disclosure. The terms "noncancellable," "guaranteed renewable," "noncancellable and guaranteed renewable," "conditionally renewable," "collectively renewable," or "optionally renewable" may not be used without further explanatory language in accordance with the disclosure requirements of Subsection R590-126-6(B).

— 2. Disability Income Effect of Employment Upon Right to Renew. Any accident and health or accident only policy which

provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from accident or sickness may provide that the insured has the right to continue the policy at least to age 60 if, at age 60, the insured has the right to continue the policy in force at least to age 65 while actively and regularly employed.

— 3. Cancellation and Renewal.

— a. Noncancellable. The terms "noncancellable" or "noncancellable and guaranteed renewable" may be used only in a policy which the insured has the right to continue in force by the timely payment of premiums set forth in the policy at least to age 65 or to eligibility for Medicare, during which period the insurer has no right to make any unilateral change to the detriment of the insured while the policy is in force.

— b. Guaranteed Renewable. Except as provided above, the term "guaranteed renewable" may be used only in a policy which the insured has the right to continue in force by the timely payment of premiums at least to age 65 or to eligibility for Medicare, during which period the insurer has no right to make any unilateral change to the detriment of the insured while the policy is in force, except that the insurer may make changes in premium rates by classes.

— c. Conditionally Renewable. The term "conditionally renewable" may be used only in a policy which the insured may have the right to continue in force by the timely payment of premiums at least to age 65 or to eligibility for Medicare, during which period the insurer has no right to make any unilateral change to the detriment of the insured while the policy is in force. However, the insurer, at its option, and by timely notice, may decline renewal for reasons stated in the policy, or may make changes in premium rates by classes.

— d. Collectively Renewable. The term "collectively renewable" may be used only in a policy which the insured may have the right to continue in force by the timely payment of premiums at least to age 65 or to eligibility for Medicare, during which period the insurer has no right to make any unilateral change in any provision of the policy while the policy is in force. However, the insurer, at its option, and by timely notice, may decline renewal of all policies of the same classification issued in this state, or may make changes in premium rates by classes.

— e. Optionally Renewable. The term "optionally renewable" may be used only in a policy which the insured may have the right to continue in force by the timely payment of premiums at least to age 65 or to eligibility for Medicare, during which period the insurer has no right to make any unilateral change in any provision of the policy while the policy is in force. However, the insurer, at its option, and by timely notice, may decline renewal of the policy or may make changes in premium rates by classes.

— f. Notice of nonrenewal or premium change. A notice of nonrenewal or change in premium shall be given no fewer than 30 days before the renewal date.

— D. Optional insureds. When accidental death and dismemberment coverage is part of the insurance coverage offered under the contract, the insured shall have the option to include all insureds under such coverage and not just the principal insured.

— E. Refund of Premium. If a policy contains a status type military service exclusion or a provision which suspends coverage during military service, the policy shall provide, upon receipt of written request, for refund of premiums as applicable to such person on a pro rata basis.

— F. Pregnancy Benefit Extension. In the event the insurer cancels or refuses to renew, except for nonpayment of premiums, policies providing pregnancy benefits shall provide for an extension of benefits

for a pregnancy, including complications of pregnancy, commencing while the policy is in force and for which benefits would have been payable had the policy remained in force.

—G. Post-hospital Admission Requirements. Policies providing convalescent or extended care benefits following hospitalization may not condition such benefits upon admission to the convalescent or extended care facility within a period of fewer than 14 days after discharge from the hospital.

—H. Handicapped Dependent Coverage Extension. Family coverage shall continue for any dependent child who is incapable of self-sustaining employment due to mental retardation or physical handicap and is chiefly dependent on the insured for support and maintenance on the date that such child's coverage would otherwise terminate under the policy due to the attainment of a specified age limit for children. The policy may require that within 31 days of such date the company receive due proof of such incapability in order for the insured to elect to continue the policy in force with respect to such child, or that a separate converted policy be issued at the option of the insured or policyholder.

—I. Transplant Donor Coverage. Any policy providing coverage for the recipient in a transplant operation shall also provide reimbursement of any medical expenses of a live donor to the extent that benefits remain and are available under the recipient's policy, after benefits for the recipient's own expenses have been paid.

—J. Recurrent Disability. A policy may contain a provision relating to recurrent disabilities, but no such provision may specify that a recurrent disability be separated by a period greater than six months.

—K. Time Limit for Occurrence of Loss. Accidental death and dismemberment benefits shall be payable if the loss occurs within 180 days from the date of the accident, irrespective of total disability. Disability income benefits, if provided, may not require the loss to commence fewer than 30 days after the date of accident, nor may any policy which the insurer cancels or refuses to renew require that it be in force at the time disability commences if the accident occurred while the policy was in force.

—L. Dismemberment Benefits. Specific dismemberment benefits may not be in lieu of other benefits unless the specific benefit equals or exceeds the other benefits.

—M. Accident Benefits. Any accident only policy providing benefits which vary according to the type of accidental cause shall prominently set forth, in both the policy and the outline of coverage, the circumstances under which benefits are payable which are less than the maximum amount payable under the policy.

—N. Continuous Total Disability. Termination of a policy shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

—O. Deterioration of Health. A policy may not be cancelled or nonrenewed by an insurer solely on the grounds of deterioration of health.

R590-126-5. Prohibited Policy Provisions.

—A. Probationary periods. No policy may contain provisions establishing either a probationary or a waiting period during which coverage is not provided under the policy, except as follows in Subsections (1) and (2):

—1. A probationary period of 30 days may apply under the definition of "sickness" contained in Subsection R590-126-3(A)(40) of this rule.

—2. A probationary period of up to six months may be applied to the following specified diseases or conditions and losses resulting therefrom:

- a. Hernia;
- b. Disorder of reproductive organs;
- c. Varicose veins;
- d. Adenoids;
- e. Appendix;
- f. Tonsils.

—3. The six month exception of Subsection R590-126-5(A)(2) may not be applicable where such specified diseases or conditions are treated on an emergency basis.

—4. Accident policies may not contain either probationary or waiting periods.

—B. "Dividend" coverage.

—1. Cash Payment. No policy or rider for additional coverage may be issued as a dividend unless an equivalent cash payment is offered to the policyholder as an alternative to such dividend policy or rider. No such dividend policy or rider may be issued for an initial term of fewer than six months.

—2. Optional Renewal. The initial renewal subsequent to the issuance of any policy or rider as a dividend shall clearly disclose that the policyholder is renewing the coverage that was provided as a dividend for the previous term and that such renewal is optional with the policyholder.

—C. Preexisting Conditions. No policy may exclude coverage for a loss due to a preexisting condition for a period greater than 12 months (six months for specified disease policies) following policy issue where the application for such insurance does not seek disclosure of prior illness, disease or physical conditions or prior medical care and treatment and such preexisting condition is not specifically excluded by the terms of the policy.

—D. "Return of Premium" or "Cash Value Benefit." A disability policy may contain a "return of premium" or "cash value benefit" so long as the insurer demonstrates that the reserve basis for such policies is adequate.

—E. Hospital Indemnity. Policies providing hospital confinement indemnity coverage may not contain provisions excluding coverage because of confinement in a hospital operated by the federal government.

—F. Limitations or Exclusions. No policy may limit or exclude coverage by type of illness, accident, treatment or medical condition, except as follows:

- 1. Preexisting conditions or diseases;
- 2. Mental or emotional disorders;
- 3. Alcoholism or drug addiction;
- 4. Pregnancy, but policies may not exclude complications of pregnancy;
- 5. Illness, treatment or medical condition arising out of:
 - a. War or act of war, whether declared or undeclared; participation in a felony, riot or insurrection; service in the armed forces or units auxiliary thereto;
 - b. Suicide (sane or insane), attempted suicide or intentionally self-inflicted injury;
 - c. Aviation;
 - d. Inter-scholastic sports, but only with respect to nonrenewable policies with a term of fewer than six months;
- 6. Cosmetic surgery, but policies may not exclude:
 - a. Reconstructive surgery when such service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part; or

— b. Reconstructive surgery because of congenital disease or anomaly of a covered dependent child which has resulted in a functional defect;

— 7. Foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain, or symptomatic complaints of the feet;

— 8. Benefits for the following:

— a. Treatment provided in a government hospital, but this exclusion may not apply to Hospital Confinement Indemnity Coverage, as defined in Subsection R590-126-7(E);

— b. Services performed by a member of the covered person's immediate family;

— c. Services for which no charge is normally made in the absence of insurance; or

— d. Duplication of benefits paid under:

— i. Medicare or other governmental program (except Medicaid); or

— ii. Any state or federal worker's compensation, employer's liability or occupational disease law, or any motor vehicle no fault coverage;

— 9. Dental care or treatment;

— 10. Corrective lenses, and examination for the prescription or fitting thereof, but policies may not exclude required lens implants following cataract surgery;

— 11. Hearing aids, and examination for the prescription or fitting thereof;

— 12. Rest cures;

— 13. Custodial care, except for long term Care policies;

— 14. Transportation;

— 15. Routine physical examinations;

— 16. Territorial limitations outside the United States.

— 17. Others as may be approved by the commissioner.

— G. Waivers.

— 1. No waiver may be used to exclude, limit, or reduce coverage or benefits unless:

— a. Acceptance of the waiver is signed by the insured; or

— b. The full text of the waiver, or a notice thereof, is contained on the first page or specification page of the policy.

— H. Medicare Compliance. Except as otherwise provided in Subsection R590-126-6(L), the terms "Medicare Supplement," "Supplement to Medicare," "Medigap," and words of similar import may not be used unless the policy is issued in compliance with this rule and rule R590-146.

R590-126-6. Disclosure Requirements.

— A. Coverage Description Statement. Each policy subject to this rule shall contain a statement, on the first page or specification page of the policy, which clearly identifies the type(s) of coverage offered.

— B. Renewal or Nonrenewal Provisions. Each policy or contract subject to this rule shall include a renewal, continuation, or nonrenewal provision. The language or specifications of such provision shall be consistent with the type of contract issued. Such provision shall be appropriately captioned, shall appear on the first page, or schedule page, of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

— C. Rider or Endorsement Acceptance. Except for riders or endorsements by which the insurer effectuates a request made in writing by the policyholder or exercises a specifically reserved right under the policy, all riders or endorsements added to a policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the

policyholder. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the increased benefit or coverage is required by law.

— D. Premium, Additional. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy.

— E. Benefit Payment Standard. A policy which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

— F. Preexisting Conditions. If a policy contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

— G. Accident Only Disclosure. All accident only policies shall contain a prominent statement on the first page of the policy, or attached thereto, in either contrasting color or in boldface type at least equal to the size of type used for policy captions, as follows: "This is an accident only policy and it does not pay benefits for loss from sickness."

— H. Age Limitation. If age is to be used as a determining factor for reducing the maximum aggregate benefits made available in the policy as originally issued, such fact shall be prominently set forth in the outline of coverage and on the schedule page of the policy. However, benefits may not be reduced below levels otherwise required by this rule.

— I. Conversion Privilege. If a policy contains a conversion privilege, it shall comply, in substance, with the following:

— 1. The caption of the provision shall be "Conversion Privilege," or words of similar import;

— 2. The provision shall indicate the persons eligible for conversion, the circumstances applicable to the conversion privilege, including any limitations on the conversion, and the person by whom the conversion privilege may be exercised;

— 3. The provision shall specify the benefits to be provided on conversion or may state that the converted coverage will be as provided on a policy form then being used by the insurer for that purpose.

— J. Specified Disease Insurance Buyer's Guide. Insurers, except direct response insurers, shall give any person applying for specified-disease insurance a Buyer's Guide, approved by the commissioner, at the time of application and shall obtain the recipient's written acknowledgment of the guide's delivery. Direct response insurers shall provide the Buyer's Guide upon request but not later than the time the policy is delivered.

— K. Specified Disease Insurance Disclosure. All specified disease policies shall contain a prominent statement on the first page or schedule page of the policy or attached thereto in either contrasting color or in boldface type at least equal to the size type used for policy captions, a prominent statement as follows: "CAUTION: This is a limited policy. Read it carefully with the outline of coverage and the Buyer's Guide."

— L. Notice Regarding Policies or Subscriber Contracts Which Are Not Medicare Supplement Policies. Any policy or subscriber contract, other than a Medicare Supplement policy, a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act, 42 U.S.C. Section 1395, et seq., or a Disability Income policy, which is issued for delivery to a person eligible by reason of age for Medicare, shall notify insureds under the policy or subscriber contract that the policy or subscriber contract is not a Medicare Supplement policy.

Such notice shall either be printed on or attached to the first page of the outline of coverage delivered to insureds under the policy or subscriber contract, or if no outline of coverage is delivered, to the first page of the policy, certificate or subscriber contract delivered to insureds. Such notice shall be in no less than 12 point type and shall contain the following language:

— "THIS POLICY IS NOT A MEDICARE SUPPLEMENT POLICY OR CONTRACT. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the company."

— M. Medicare Supplement Buyer's Guide. Insurers issuing policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis other than incidentally, to persons eligible for Medicare by reason of age, shall provide to the applicant a Medicare Supplement Buyer's Guide, in a form approved by the commissioner and entitled "Guide to Health Insurance For People With Medicare." Delivery of the Buyer's Guide shall be made whether or not the policy qualifies as a "Medicare Supplement Coverage" according to this rule or Rule R590-146. Except in the case of direct response insurers, delivery of the Buyer's Guide shall be made at the time of application and acknowledgment of receipt or certification of delivery of the Buyer's Guide shall be obtained by the insurer. Direct response insurers shall deliver the Buyer's Guide upon request but not later than at the time the policy is delivered.

— N. Emergency Care Limitation. A policy which limits treatment in an emergency room or similar facility shall disclose the existence of the limitation in the outline of coverage and on the schedule page of the policy.

R590-126-7. Disability, Minimum Standards for Benefits.

— A. The following minimum standards for benefits are prescribed for the categories of coverage noted in the following subsections R590-126-7(C) through (K). A policy or contract subject to this rule which does not meet the required minimum standards contained herein may not be delivered or issued for delivery in this state.

— B. Exception: A nonconforming policy may be issued only:

— 1. Upon approval by the commissioner as Limited Benefit Health Insurance under Subsection R590-126-7(K), and

— 2. With an Outline of Coverage which complies with the terms of Subsection R590-126-8(K) of this rule.

— C. Basic Hospital Expense Coverage. This is a policy of disability insurance which provides coverage for a period of not fewer than 31 days during any continuous hospital confinement for each person insured under the policy, for expense incurred for necessary treatment and services rendered as a result of accident or sickness for at least the following:

— 1. Daily hospital room and board in an amount not less than 70% of the usual and customary charges for semiprivate room accommodations;

— 2. Miscellaneous hospital services for expenses incurred for charges made by the hospital for services and supplies which are customarily rendered by the hospital and provided for use only during any one period of confinement in an amount not less than 70% of the charges incurred or ten times the daily hospital room and board benefits, whichever is less; and

— 3. Hospital outpatient services consisting of:

— a. Hospital services on the day surgery is performed;

— b. Hospital services rendered within 72 hours after accidental injury, in an amount not less than \$200 per accident;

— c. X ray and laboratory tests to the extent that benefits for such services would have been provided if rendered to an inpatient of the hospital to an extent not less than \$200.

— 4. Benefits provided under (1) and (2) of R590-126-7(C) above, may be provided subject to a combined deductible amount not in excess of \$200.

— D. Basic Medical-Surgical Expense Coverage. This is a policy of disability insurance which provides coverage for each person insured under the policy for the expenses incurred for the necessary services rendered by a physician for treatment of an injury or sickness for at least the following:

— 1. Surgical services, of not less than 70% of the usual, reasonable and customary charges;

— 2. Anesthesia services, consisting of administration of necessary general anesthesia and related procedures in connection with covered surgical service, rendered by a physician other than the physician or his assistant performing the surgical services, in an amount not less than the lesser of:

— a. 70% of the reasonable charges; or

— b. 15% of the surgical service benefit.

— 3. In hospital medical services, consisting of physician services rendered to a person who is a bed patient in a hospital for treatment of sickness or injury other than that for which surgical care is required, in an amount not less than 70% of the reasonable charges for not fewer than 31 days during one period of confinement.

— E. Hospital Confinement Indemnity Coverage. This is a policy of disability insurance which provides daily benefits for hospital confinement on an indemnity basis in an amount not less than \$30 per day and for a period of not fewer than 31 days during any one period of confinement for each person insured under the policy.

— F. Major Medical Expense Coverage. This is a disability insurance policy which provides hospital, medical and surgical expense coverage, to an aggregate maximum of not less than \$25,000; copayment by the covered person not to exceed 30% of covered charges or up to five per cent of the aggregate maximum limit under the policy; an annual deductible stated on a per person, per family, or per calendar or policy year basis, or a combination of such bases not to exceed five per cent of the aggregate maximum limit under the policy. Benefits for each covered person shall be at least:

— 1. Daily hospital room and board expenses in an amount not less than 70% of the semiprivate room rate in the area where the insured resides, for a period of not fewer than 31 days during continuous hospital confinement;

— 2. Miscellaneous hospital services in an amount not less than 20 times the daily room and board rate;

— 3. Surgical services in an amount not less than 70% of the usual, reasonable and customary charges;

— 4. Anesthesia services in an amount not less than 15% of the covered surgical fees;

— 5. In hospital medical services, consisting of physician services rendered to a person who is a bed patient in a hospital for treatment of sickness or injury other than that for which surgical care is required.

— 6. Out of hospital care, consisting of physicians' services rendered on an ambulatory basis where coverage is not provided elsewhere in the policy for diagnosis and treatment of sickness or injury, and diagnostic x ray, laboratory services, radiation therapy, chemotherapy, and hemodialysis ordered by a physician; and

— 7. Not fewer than three of the following additional benefits, for an aggregate maximum of such covered charges of not less than \$2,500:

— a. Private duty nursing services;

— b. Nursing home care;

— c. Physiotherapy;

— d. Rental of special medical equipment, as defined by the insurer in the policy;

— e. Prosthetic devices, casts, splints, trusses or braces;

— f. Treatment for functional nervous disorders, and mental and emotional disorders; or

— g. Out of hospital prescription drugs and prescription medications.

— G. Disability Income Protection Coverage. This is a policy which provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from either sickness or injury or a combination thereof which:

— 1. Provides that periodic payments which are payable at ages after 62 and reduced solely on the basis of age are at least 50% of amounts payable immediately prior to 62.

— 2. Contains an elimination period no greater than:

— a. In the case of a coverage providing a benefit of one year or less, 90 days;

— b. In all other cases, 365 days.

— 3. Is payable during disability for at least six months, except in the case of a policy covering disability arising out of pregnancy, childbirth or miscarriage in which case the period may be for one month.

— 4. Does not reduce benefits because of an increase in Social Security or similar benefits during a benefit period.

— 5. The provisions of this Subsection R590-126-7(G) do not apply to policies providing business buyout coverage.

— H. Accident Only Coverage. This is a policy of accident insurance which provides coverage, singly or in combination, for death, dismemberment, disability, or hospital and medical care caused by accident. Accidental death and double dismemberment amounts under such a policy shall be at least \$1,000 and a single dismemberment amount shall be at least \$500.

— I. Specified Accident and Specified Disease Coverage.

— 1. "Specified Accident Coverage" is an accident insurance policy which provides coverage for a specifically identified kind of accident (or accidents) for each person insured under the policy for accidental death or accidental death and dismemberment, combined with a benefit amount not less than \$1,000 for accidental death, \$1,000 for double dismemberment and \$500 for single dismemberment.

— 2. "Specified Disease Coverage" pays benefits for the diagnosis and treatment of a specifically named disease or diseases. Any such policy shall meet the general rules set forth in Subsection R590-126-7(I)(2)(a). The policy shall also meet the minimum standards set forth in the applicable Subsections R590-126-7(I)(2)(b), (c), or (d).

— a. General Rules. The following rules apply to specified disease coverage in addition to all other rules imposed by this rule. In cases of conflict with other rules, the following shall govern:

— i. Preexisting Conditions. A specified disease policy, regardless of whether the basis of issuance is a detailed application form, a simplified application form, or an enrollment form, may not deny a claim for loss which occurs more than six months after the effective date of coverage due to a preexisting condition. Such policy may not define a preexisting condition more restrictively than a condition which first manifested itself within six months prior to the effective date of coverage or which was diagnosed by a physician at any time prior to the effective date of coverage.

— ii. Policy Designation. Policies covering a single specified disease or combination of specified diseases may not be sold or offered for sale other than as specified disease coverage under this section.

— iii. Medical Diagnosis. Any policy issued pursuant to this section which conditions payment upon pathological diagnosis of a covered disease, shall also provide that if a pathological diagnosis is medically inappropriate, a clinical diagnosis will be accepted.

— iv. Related Conditions. Notwithstanding any other provision of this rule, specified disease policies shall provide benefits to any covered person not only for the specified disease(s) but also for any other condition(s) or disease(s) directly caused or aggravated by the specified disease(s) or the treatment of the specified disease(s).

— v. Renewability. Specified disease coverage shall be at least Guaranteed Renewable.

— vi. Probationary Period. No policy issued pursuant to Subsection R590-126-7(I) may contain either an elimination or a probationary period greater than 30 days.

— vii. Medicaid Disclaimer. Any application for specified disease coverage shall contain a statement above the signature of the applicant that no person to be covered for specified disease is also covered by any Title XIX program, designated as Medicaid or any similar name. Such statement may be combined with any other statement for which the insurer may require the applicant's signature.

— viii. Medical Care and Charges. Payments may be conditioned upon a covered person receiving medically necessary care, prescribed by a physician, given in a medically appropriate location, under a medically accepted Plan of Care. Payment may be limited to amounts not in excess of usual and customary charges.

— ix. Other Insurance. Benefits for specified disease coverage shall be paid regardless of other coverage.

— x. Retroactive Application of Coverage. After the effective date of the coverage, or the conclusion of an applicable waiting period, if any, subject to Subsection R590-126-7(I)(2)(a)(vi), benefits shall begin with the first day of care or confinement, if such care or confinement is for a covered disease, even though the diagnosis is made at some later date.

— b. Minimum Expense Incurred Benefits. The following minimum benefit standards apply to specified disease coverage on an expense incurred basis:

— i. Policy Limits. A deductible amount not to exceed \$250, an aggregate benefit limit of not less than \$25,000 and a benefit period of not fewer than three years.

— ii. Copayment. Covered services provided on an outpatient basis may be subject to a copayment which may not exceed 20%.

— iii. Covered Services. Covered services shall include the following:

— (A) Hospital room and board and any other hospital furnished medical services or supplies;

— (B) Treatment by, or under the direction of, a legally qualified physician or surgeon;

— (C) Private duty nursing services of a Registered Nurse (R.N.), or Licensed Practical Nurse (L.P.N.);

— (D) X-ray, radium, chemotherapy and other therapy procedures used in diagnosis and treatment;

— (E) Blood transfusions, and the administration thereof, including expense incurred for blood donors;

— (F) Drugs and medicines prescribed by a physician;

— (G) Professional ambulance for local service to or from a local hospital;

—(H) The rental of any respiratory or other mechanical apparatuses;

—(I) Braces, crutches and wheelchairs as are deemed necessary by the attending physician for the treatment of the disease;

—(J) Emergency transportation if, in the opinion of the attending physician, it is necessary to transport the insured to another locality for treatment of the disease;

—(K) Home Health Care, as defined in Subsection R590-126-3(A)(14), which is provided by, or under the direction of, a Home Health Agency. The Plan of Care shall be prescribed in writing.

—(L) Physical, speech, hearing and occupational therapy;

—(M) Special equipment including hospital bed, toilette, pulleys, wheelchairs, aspirator, chux, oxygen, surgical dressings, rubber shields, colostomy and ileostomy appliances;

—(N) Prosthetic devices including wigs and artificial breasts; and

—(O) Nursing Home care for noneustodial services.

c. Minimum Per Diem Benefits. The following minimum benefit standards apply to coverages written on a per diem indemnity basis:

i. Hospital Confinement Benefit. A fixed sum payment of at least \$200 for each day of hospital confinement for at least 365 days, with no deductible amount permitted;

ii. Outpatient Benefit. A fixed sum payment equal to one half the hospital inpatient benefits for each day of hospital or nonhospital outpatient surgery, radiation therapy and chemotherapy, for at least 365 days of treatment.

iii. Nursing Home/Home Health Care Benefit. Benefits tied to confinement in a Nursing Home or to receipt of Home Health Care are optional; if a policy offers these benefits, they must equal the following:

(A) A fixed sum payment equal to one half the hospital inpatient benefit for each day of Skilled Nursing Home confinement for at least 100 days.

(B) A fixed sum payment equal to one fourth the hospital inpatient benefit for each day of Home Health Care for at least 180 days.

(C) Notwithstanding any other provision of this rule, any restriction or limitation applied to the benefits in the above Subsections R590-126-7(1)(2)(c)(iii)(A) and (B), whether by definition or otherwise, may not be more restrictive than those under Medicare.

d. Principal Sum Benefits. The following minimum benefit standards apply to principal sum indemnity coverage of any specified disease(s):

i. Benefits shall be payable as a fixed, one-time payment made within 30 days of submission to the insurer of proof of diagnosis of the specified disease(s). Dollar benefits shall be offered for sale only in even increments of \$1,000.

ii. Where coverage is advertised or otherwise represented to offer generic coverage of a disease or diseases (e.g., "cancer insurance," "heart disease insurance"), the same dollar amounts shall be payable regardless of the particular subtype of the disease (e.g., lung or bone cancer), with one exception. In the case of clearly identifiable subtypes with significantly lower treatment costs (e.g., skin cancer), lesser amounts may be payable so long as the policy clearly differentiates that subtype and its benefits.

J. Catastrophic Coverage. This is a policy of disability insurance which:

1. provides benefits for medical expenses incurred by the insured to an aggregate maximum of not less than \$1,000,000;

2. contains no separate internal dollar limits;

3. may be subject to a policy deductible which does not exceed the greater of .01% of the policy limit or the amount of other disability insurance coverage for the same medical expenses; and

4. contains no percentage participation or coinsurance clause for expenses which exceed the deductible.

K. Limited Benefit Health Insurance Coverage. This is any policy or contract other than a policy or contract covering only a specified disease or diseases which provides benefits that are less than the minimum standards for benefits required under Subsections R590-126-7(C), (D), (E), (F), (G), (H), (I) and (J). Such policies or contracts may be delivered or issued for delivery in this state only if the outline of coverage provided by Subsection R590-126-8(K) of this rule is completed and delivered as required by Subsection R590-126-8(A) of this rule. A policy covering a single specified disease or combination of diseases shall meet the requirements of Subsection R590-126-7(I) and may not be offered for sale as a "Limited Coverage" under this section. This subsection does not apply to policies designed to provide coverage for Long Term Care, as governed by Rule R590-148, or Medicare Supplement, as governed by R590-146.

R590-126-8. Disability, Outlines of Coverage.

A. Outline of Coverage Requirements.

1. No policy or contract subject to this rule may be delivered or issued for delivery in this state unless an appropriate outline of coverage, as prescribed in Subsections R590-126-8(C) through (L), is completed and delivered to the applicant at the time application is made, with acknowledgement of receipt or certification of delivery provided to the insurer, or is delivered with the policy. In the case of direct response solicitation, the outline of coverage shall be delivered upon request, but no later than the time the policy is delivered.

2. Substitute Outline. If an outline of coverage was delivered at the time of application and the policy or contract is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or contract shall accompany the policy or contract when it is delivered and contain the following statement, in no less than 12 point type, immediately above the company name: "NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

3. Changes in Outline. Appropriate changes in terminology may be made in the outline of coverage in the case of contracts of hospital, medical, or dental service corporations. In any other case where the prescribed outline of coverage is inappropriate for the coverage provided by the policy or contract, an alternate outline of coverage shall be submitted to the commissioner for prior approval.

4. Outlines of Coverage for Combined Coverages. The outlines of coverage designated in Subsections R590-126-8(A)(4)(a) and (b) herein shall be appropriate for policies offering the combination coverages as listed:

a. Basic Hospital and Medical Surgical Expense Outline (Outline (L)). The following combination coverages are included:

i. Basic Hospital Expense (Coverage (C)) and Basic Medical Surgical Expense Coverage (Coverage (D));

b. Major Medical Expense Outline (Outline (F)). The following combination coverages may be included:

i. Basic Hospital Expense (Coverage (C)) and Major Medical Expense Coverage (Coverage (F)); or

ii. Basic Medical Surgical Expense (Coverage (D)) and Major Medical Expense Coverage (Coverage (F)); or

iii. Basic Hospital Expense (Coverage (C)), Basic Medical Surgical Expense (Coverage (D)), and Major Medical Expense Coverage (Coverage (F)).

— B. ~~Outlines of Coverage Required; Sample Provisions.~~ Insurance transacted under the provisions of this rule shall be disclosed as provided by this Section. ~~Disclosure of the coverages listed in Subsections R590-126-7(C) through (K) shall include an Outline of Coverage which meets the requirements of the following corresponding Subsections R590-126-8(C) through (K), or an outline for a combination of coverages which meets the requirements of Subsection R590-126-8(A)(4) and either Subsection R590-126-8(F) or (L). These outlines are available from the Utah Insurance Department.~~

— C. ~~Basic Hospital Expense Coverage (Outline of Coverage).~~ An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(C) of this rule. The items included in the outline of coverage shall appear in the sequence prescribed: (Company Name) ~~Basic Hospital Expense Coverage Outline of Coverage~~

— 1. ~~Read Your Policy Carefully.~~ This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you **READ YOUR POLICY CAREFULLY!**

— 2. ~~Basic Hospital Expense Coverage.~~ Policies of this category are designed to provide, to persons insured, coverage for hospital expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services, and hospital outpatient services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for physician's or surgeon's fees or unlimited hospital expenses.

— 3. ~~A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy, in the following order:~~

- a. ~~Daily hospital room and board;~~
- b. ~~Miscellaneous hospital services;~~
- c. ~~Hospital outpatient services;~~
- d. ~~Other benefits, if any;~~
- e. ~~The above description of benefits shall be stated clearly and concisely, and shall include a description of any deductible or copayment provision applicable to the benefits described.~~

— 4. ~~A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in (3) above.~~

— 5. ~~A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.~~

— D. ~~Basic Medical Surgical Expense Coverage (Outline of Coverage).~~ An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(D) of this rule. The items included in the outline of coverage shall appear in the sequence prescribed:

— (Company Name) ~~Basic Medical Surgical Expense Coverage Outline of Coverage~~

— 1. ~~Read Your Policy Carefully.~~ This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control your policy. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you **READ YOUR POLICY CAREFULLY!**

— 2. ~~Basic Medical Surgical Expense Coverage.~~ Policies of this category are designed to provide, to persons insured, coverage for medical surgical expenses incurred as a result of a covered accident or

sickness. ~~Coverage is provided for surgical services, anesthesia services, and in hospital medical services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for hospital expenses or unlimited medical-surgical expenses.~~

— 3. ~~A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy, in the following order:~~

- a. ~~Surgical services;~~
- b. ~~Anesthesia services;~~
- c. ~~In hospital medical services;~~
- d. ~~Other benefits, if any;~~
- e. ~~The above description of benefits shall be stated clearly and concisely, and shall include a description of any deductible or copayment provision applicable to the benefits described.~~

— 4. ~~A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in (3) above.~~

— 5. ~~A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.~~

— E. ~~Hospital Confinement Indemnity Coverage (Outline of Coverage).~~ An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(E) of this rule. The items included in the outline of coverage shall appear in the sequence prescribed:

— (Company Name) ~~Hospital Confinement Indemnity Coverage Outline of Coverage~~

— 1. ~~Read Your Policy Carefully.~~ This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you **READ YOUR POLICY CAREFULLY!**

— 2. ~~Hospital Confinement Indemnity Coverage.~~ Policies of this category are designed to provide, to persons insured, coverage in the form of a fixed daily benefit during periods of hospitalization resulting from a covered accident or sickness, subject to any limitations set forth in the policy. Such policies do not provide any benefits other than the fixed daily indemnity for hospital confinement and any additional benefit described below.

— 3. ~~A brief specific description of the benefits contained in this policy in the following order:~~

- a. ~~Daily benefit payable during hospital confinement;~~
- b. ~~Duration of such benefit described in (a), above.~~
- c. ~~The above description of benefits shall be stated clearly and concisely.~~

— 4. ~~A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefit, described in (3) above.~~

— 5. ~~A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.~~

— 6. ~~Any benefits provided in addition to the daily hospital benefit.~~

— F. ~~Major Medical Expense Coverage (Outline of Coverage).~~ An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(F) of this rule. An outline of coverage which meets these requirements shall also be issued in connection with a policy insuring a combination of the coverages under policies meeting the standards of Subsections R590-126-7(C) and (F), (D) and (F), or (C), (D) and (F);

in accordance with the requirements of Subsection R590-126-8(A)(4). The items included in the outline of coverage shall appear in the sequence prescribed:

—(Company Name) Major Medical Expense Coverage Outline of Coverage

—1. Read Your Policy Carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

—2. Major Medical Expense Coverage. Policies of this category are designed to provide, to persons insured, coverage for major hospital, medical, and surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services, surgical services, anesthesia services, in-hospital medical services, and out-of-hospital care, subject to any deductibles, copayment provisions, or other limitations which may be set forth in the policy. Basic hospital or basic medical insurance coverage is not provided in this policy. (Note: If basic hospital and/or basic medical insurance coverage is provided, the inappropriate part of the last sentence may be omitted.)

—3. A brief specific description of the benefits, including dollar amounts, contained in this policy, in the following order:

- a. Daily hospital room and board;
- b. Miscellaneous hospital services;
- c. Surgical services;
- d. Anesthesia services;
- e. In-hospital medical services;
- f. Out-of-hospital care;
- g. Maximum dollar amount for covered charges;
- h. Other benefits, if any;

—i. The above description of benefits shall be stated clearly and concisely, and shall include a description of any deductible or copayment provision applicable to the benefits described.

—4. A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in (3) above.

—5. A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums:

—G. Disability Income Protection Coverage (Outline of Coverage). An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(G) of this rule. The items included in the outline of coverage shall appear in the sequence prescribed:

—(Company Name) Disability Income Protection Coverage Outline of Coverage

—1. Read Your Policy Carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

—2. Disability Income Protection Coverage. Policies of this category are designed to provide, to persons insured, coverage for disabilities resulting from a covered accident or sickness, subject to any limitations set forth in the policy. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.

—3. A brief specific description of benefits shall be stated clearly and concisely.

—4. A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in (3) above.

—5. A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums:

—H. Accident Only Coverage (Outline of Coverage). An outline of coverage in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(H) of this rule. The items included in the outline of coverage shall appear in the sequence prescribed:

—(Company Name) Accident Only Coverage Outline of Coverage

—1. Read Your Policy Carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

—2. Accident Only Coverage. Policies of this category are designed to provide, to persons insured, coverage for certain losses resulting from a covered accident ONLY, subject to any limitations contained in the policy. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.

—3. A brief specific description of the benefits contained in this policy. The description shall be stated clearly and concisely, and shall include a description of any deductible or copayment provision applicable to the benefits described. Proper disclosure of benefits which vary according to accidental cause shall be made in accordance with Subsection R590-126-4(M) of this rule.

—4. A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in (3) above.

—5. A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums:

—I. Specified Accident or Specified Disease Coverage (Outline of Coverage). An outline of coverage in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(I) of this rule. The coverage shall be identified by the appropriate bracketed title. The items included in the outline of coverage shall appear in the sequence prescribed:

—(Company Name) (Specified Accident) (Specified Disease) Coverage Outline of Coverage

—1. This policy is designed only as a supplement for a comprehensive health insurance policy and should not be purchased unless you have this underlying coverage. It should not be purchased by persons covered under Medicaid. Read the Buyer's Guide discussion of the possible limits on benefits in this type of policy.

—2. Read Your Policy Carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

—3. (Specified Accident) (Specified Disease) Coverage. Policies of this category are designed to provide, to persons insured, restricted coverage paying benefits ONLY when certain losses occur as a result of specified accidents or specified diseases. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expense.

—4. A brief specific description of the benefits, including dollar amounts, contained in this policy. The description shall be stated

clearly and concisely, and shall include a description of any deductible or copayment provisions applicable to the benefits described. Proper disclosure of benefits which vary according to accidental cause shall be made in accordance with Subsection R590-126-4(M) of this rule.

— 5. A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in (4) above.

— 6. A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

— J. Catastrophic Coverage. An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(J) of this rule. The items included in the outline of coverage shall appear in the sequence prescribed:

— (Company Name) Catastrophic Coverage Outline of Coverage

— 1. Read Your Policy Carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

— 2. Catastrophic Coverage. Policies of this category are designed to provide, to persons insured, catastrophic coverage for losses resulting from a covered accident or sickness, subject to any limitations set forth in the policy.

— 3. A brief specific description of benefits shall be stated clearly and concisely.

— 4. A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in (3) above.

— 5. A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

— K. Limited Benefit Health Coverage (Outline of Coverage). An outline of coverage, in the form prescribed below, shall be issued in connection with policies which do not meet the minimum standards of Section R590-126-7. The items included in the outline of coverage shall appear in the sequence prescribed:

— (Company Name) Limited Benefit Health Coverage Outline of Coverage

— 1. Read Your Policy Carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

— 2. Limited Benefit Health Coverage. Policies of this category are designed to provide, to persons insured, LIMITED OR SUPPLEMENTAL coverage.

— 3. A brief specific description of the benefits, including dollar amounts, contained in this policy. The description shall be stated clearly and concisely, and shall include a description of any deductible or copayment provisions applicable to the benefits described. Proper disclosure of benefits which vary according to accidental cause shall be made in accordance with Subsection R590-126-4(M) of this rule.)

— 4. A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in (3) above.

— 5. A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

— L. Basic Hospital and Medical Surgical Expense Coverage (Outline of Coverage). An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsections R590-126-7(C) and (D) of this rule. The items included in the outline of coverage shall appear in the sequence prescribed:

— (Company Name) Basic Hospital and Medical Surgical Expense Coverage Outline of Coverage

— 1. Read Your Policy Carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

— 2. Basic Hospital and Medical Surgical Expense Coverage. Policies of this category are designed to provide, to persons insured, coverage for hospital and medical surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services, hospital outpatient services, surgical services, anesthesia services, and in-hospital medical services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for unlimited hospital or medical surgical expenses.

— 3. A brief specific description of the benefits including dollar amounts and number of days duration where applicable, contained in this policy, in the following order:

- a. Daily hospital room and board;
- b. Miscellaneous hospital services;
- c. Hospital outpatient services;
- d. Surgical services;
- e. Anesthesia services;
- f. In hospital medical services;
- g. Other benefits, if any;

— h. The above description of benefits shall be stated clearly and concisely, and shall include a description of any deductible or copayment provision applicable to the benefits described.

— 4. A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any manner operate to qualify payment of the benefits described in (3) above.

— 5. A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

R590-126-9. Disability, Requirements for Replacement.

— A. Application Information. Application forms shall include a question designed to elicit information as to whether the insurance to be issued is intended to replace any other disability policy or certificate presently in force. A supplementary application or other form to be signed by the applicant containing such a question may be used.

— B. Notice to Existing Insurer. Where replacement is involved, the replacing insurer shall notify by written communication the existing insurer of the proposed replacement. Such existing insurance shall be identified by the name of the insurer, name of insured, and insured's address or contract number. The written communication shall be made within five working days of the date the application is received in the replacing insurer's home or regional office or the date the proposed policy or contract is issued, whichever is sooner.

~~— C. Notice to Applicant.~~

~~— 1. Nondirect Response. Upon determining that a sale will involve replacement, an insurer, other than a direct response insurer, or its agent, shall furnish the applicant, prior to issuance or delivery of the policy or certificate, the notice described in R590-126-9(D) below. One copy of such notice shall be retained by the applicant and an additional copy, signed by the applicant, shall be retained by the insurer.~~

~~— 2. Direct Response. A direct response insurer shall deliver to the applicant, upon issuance of the policy or certificate, the notice described in R590-126-9(E) below.~~

~~— D. Nondirect Response Notice Form. The notice required by Subsection R590-126-9(C)(1) above for an insurer, other than a direct response insurer, shall be in substantially the following form: "NOTICE TO APPLICANT REGARDING REPLACEMENT OF DISABILITY INSURANCE"~~

~~— 1. According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing insurance and replace it with a policy to be issued by (insert Company Name) Insurance Company. Your new policy provides (insert number of days) within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.~~

~~— a. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.~~

~~— b. You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.~~

~~— c. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history.~~

~~— d. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, re-read it carefully to be certain that all information has been properly recorded.~~

~~— e. The above "Notice to Applicant" was delivered to me on ... (Date) ...; ... (Signature) ...~~

~~— E. Direct Response Notice Form. The notice required by Subsection R590-126-9(C)(2) above for a direct response insurer shall be in substantially the following form: "NOTICE TO APPLICANT REGARDING REPLACEMENT OF DISABILITY INSURANCE"~~

~~— 1. According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing disability insurance and replace it with the policy delivered herewith issued by (insert Company Name) Insurance Company. Your new policy provides (insert number of days) within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.~~

~~— a. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new~~

~~policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.~~

~~— b. You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.~~

~~— c. (To be included only if the application is attached to the policy). If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (insert company name and address) within the time allowed if any information is not correct and complete, or if any past medical history has been left out of the application.~~

~~— F. Exception. The notices described in this section will not be required in the solicitation of accident only or single premium nonrenewable policies.~~

~~R590-126-10. Penalties.~~

~~— Persons found, after hearing or other acceptable process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308, U.C.A.~~

~~R590-126-11. Severability.~~

~~— If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances may not be affected thereby.~~

~~KEY: insurance law~~**~~1993~~****~~Notice of Continuation February 1, 2002~~****~~31A-2-201~~****~~31A-2-202~~****~~31A-21-101~~****~~31A-21-201~~****~~31A-22-605~~****~~31A-23-302~~****~~31A-23-312~~****~~31A-26-301]R590-126. Accident and Health Insurance Minimum Standards Rule.~~****~~R590-126-1. Authority.~~**

~~— This rule is issued by the insurance commissioner pursuant to the following provisions of the Utah Insurance Code:~~

~~— (1) Subsection 31A-2-201(3)(a) authorizes rules to implement the Insurance Code;~~

~~— (2) Section 31A-2-202 and Subsection 31A-23-312(2) authorizes the commissioner to request reports, conduct examinations, and inspect records of any licensee;~~

~~— (3) Section 31A-22-605 requires the commissioner to adopt rules to establish minimum standards for disclosure in the sale of, and benefits to be provided by individual and franchise accident and health policies;~~

~~— (4) Section 31A-22-623 requires coverage of inborn metabolic errors;~~

~~— (5) Section 31A-22-626 requires coverage of diabetes;~~

(6) Subsection 31A-23-302(8) governs unfair marketing practices; and

(7) Subsection 31A-26-301(1) governs claims payment practices.

R590-126-2. Purpose and Scope.

(1) Purpose. The purpose of this rule is to provide reasonable standardization and simplification of terms and coverages of insurance policies in order to facilitate public understanding and comparison and to prohibit provisions which may be misleading or confusing in connection either with the purchase of such coverages or with the settlement of claims, and to provide for full disclosure in the sale of such insurance.

(2) Scope.

(a) This rule shall apply to all accident and health insurance policies, including health maintenance organization contracts, and subscriber contracts of hospital, medical and dental service corporations. Conversion policies shall be subject to this rule except where Section 31A-22-701, et. seq., requires otherwise.

(b) This rule shall not apply to:

(i) Medicare supplement policies; or

(ii) group health benefit plans issued to an employer.

R590-126-3. Definitions.

In addition to the definitions of 31A-1-301 and Subsection 31A-22-605(2), the following definitions shall apply for the purposes of this rule.

(1) "Accident," "accidental injury," and "accidental means" shall be defined to employ "result" language and shall not include words that establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(a) The definition shall not be more restrictive than the following: "injury" or "injuries" means accidental bodily injury sustained by the insured person that is the direct cause of the condition for which benefits are provided, independent of disease or bodily infirmity or any other cause and that occurs while the insurance is in force.

(b) Unless otherwise prohibited by law, the definition may exclude injuries for which benefits are paid under worker's compensation, any employer's liability or similar law, or a motor vehicle no-fault plan.

(2) "Adult Day Care" shall mean a facility duly licensed and operating within the scope of such license, which provides a group program designed to meet the needs of functionally impaired adults for a period of fewer than 24 hours per day.

(3) "Certificate of Completion" shall mean a document issued by the Utah Board of Education to a person who completes an approved course of study not leading to a diploma, or to one who passes a challenge for that same course of study, or to one whose out-of-state credentials and certificate are acceptable to the Board.

(4) "Complications of pregnancy" shall mean diseases or conditions the diagnoses of which are distinct from pregnancy but are adversely affected or caused by pregnancy and not associated with a normal pregnancy.

(a) "Complications of Pregnancy" include acute nephritis, nephrosis, cardiac decompensation, ectopic pregnancy which is terminated, a spontaneous termination of pregnancy when a viable birth is not possible, puerperal infection, eclampsia, pre-eclampsia and toxemia.

(b) This definition does not include false labor, occasional spotting, doctor prescribed rest during the period of pregnancy,

morning sickness, and conditions of comparable severity associated with management of a difficult pregnancy.

(5) "Convalescent nursing home," "extended care facility," or "skilled nursing facility" shall mean a facility duly licensed and operating within the scope of such license.

(6) "Cosmetic Surgery" or "Reconstructive Surgery" shall mean any surgical procedure performed primarily to improve physical appearance.

(a) This definition does not include surgery, which is necessary:

(i) to correct damage caused by injury or sickness;

(ii) for reconstructive treatment following medically necessary surgery;

(iii) to provide or restore normal bodily function; or

(iv) to correct a congenital disorder that has resulted in a functional defect.

(b) This provision does not require coverage for preexisting conditions otherwise excluded.

(7) "Custodial Care" shall mean a Plan of Care, which does not provide treatment for sickness or injury, but is only for the purpose of meeting personal needs and maintaining physical condition when there is no prospect of effecting remission or restoration of the patient to a condition in which care would not be required. Such care may be provided by persons without nursing skills or qualifications. If a nursing care facility is only providing custodial or residential care, the level of care may be so characterized.

(8) "Elimination Period" or "Waiting Period" shall mean the specified number of consecutive days at the start of each period of disability for which no benefits are payable.

(9) "Experimental Treatment" is defined as medical treatment, services, supplies, medications, drugs, or other methods of therapy or medical practices which are not accepted as a valid course of treatment by your state's medical association, the U.S. Food and Drug Administration, the American Medical Association, or the Surgeon General.

(10) "Home Health Agency" shall mean a public agency or private organization, or subdivision of a health care facility, licensed and operating within the scope of such license.

(11) "Home Health Aide" shall mean a person who obtains a Certificate of Completion, as required by law, which allows performance of health care and other related services under the supervision of a registered nurse from the home health agency, or performance of simple procedures as an extension of physical, speech, or occupational therapy under the supervision of licensed therapists.

(12) "Home Health Care" shall mean services provided by a home health agency.

(13) "Homemaker" shall mean a person who cares for the environment in the home through performance of duties such as housekeeping, meal planning and preparation, laundry, shopping and errands.

(14) "Homemaker/Home Health Aide" shall mean a person who has obtained a Certificate of Completion, as required by law, which allows performance of both homemaker and home health aide services, and who provides health care and other related services under the supervision of a registered nurse from the home health agency or under the supervision of licensed therapists.

(15) "Hospice" shall mean a program of care for the terminally ill and their families which occurs in a home or in a health care facility and which provides medical, palliative, psychological, spiritual, or supportive care and treatment and is licensed and operating within the scope of such license.

(16) "Hospital" means a facility that is licensed and operating within the scope of such license. This definition may not preclude the requirement of medical necessity of hospital confinement or other treatment.

(17) "Intermediate Nursing Care" shall mean nursing services provided by, or under the supervision of, a registered nurse (R.N.). Such care shall be for the purpose of treating the condition for which confinement is required.

(18) "Medical Necessity" means:

(a) health care services or products that a prudent health care professional would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

(i) in accordance with generally accepted standards of medical practice in the United States;

(ii) clinically appropriate in terms of type, frequency, extent, site, and duration;

(iii) not primarily for the convenience of the patient, physician, or other health care provider; and

(iv) covered under the contract;

(b) when a medical question-of-fact exists medical necessity shall include the most appropriate available supply or level of service for the individual in question, considering potential benefits and harms to the individual, and known to be effective.

(i) For interventions not yet in widespread use, the effectiveness shall be based on scientific evidence.

(ii) For established interventions, the effectiveness shall be based on:

(a) scientific evidence;

(b) professional standards; and

(c) expert opinion.

(19) "Medicare" means the "Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended."

(20) "Medicare Supplement Policy" shall mean an individual, franchise, or group policy of accident and health insurance, other than a policy issued pursuant to a contract under section 1876 of the federal Social Security Act, 42 U.S.C. section 1395 et seq., or an issued policy under a demonstration project specified in 41 U.S.C. section 1395ss(g)(1), that is advertised, marketed, or primarily designed as a supplement to reimbursements under Medicare for hospital, medical, or surgical expenses of persons eligible for Medicare.

(21) "Mental or Nervous Disorders" may not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or any other mental or emotional disease or disorder which does not have a demonstrable organic cause.

(22) "Nurse" may be defined so that the description of nurse is restricted to a type of nurse, such as registered nurse (R.N.), or licensed practical nurse (L.P.N.). If the words "nurse" or "registered nurse" are used without specific instruction, then the use of such terms requires the insurer to recognize the services of any individual who qualifies under such terminology in accordance with applicable statutes or administrative rules.

(23) "Nurse, Licensed Practical" shall mean a person who is registered and licensed to practice as a practical nurse.

(24) "Nurse, Registered" shall mean any person who is registered and licensed to practice as a registered nurse.

(25) "Nursing Care" shall mean assistance provided for the health care needs of sick or disabled individuals, by or under the direction of licensed nursing personnel.

(26) "One Period of Confinement" shall mean consecutive days of in-hospital service received as an inpatient, or successive confinements when discharge from and readmission to the hospital occurs within a period of time of not more than 90 days or three times the maximum number of days of in-hospital coverage provided by the policy up to a maximum of 180 days.

(27) "Partial Disability" shall be defined in relation to the individual's inability to perform one or more, but not all, of the "major," "important," or "essential" duties of employment or occupation or may be related to a "percentage" of time worked or to a "specified number of hours" or to "compensation." Where a policy provides total disability benefits and partial disability benefits, only one elimination period may be required.

(28) "Personal Care" shall mean assistance, under a plan of care by a home health agency, provided to persons in activities of daily living.

(29) "Personal Care Aide" shall mean a person who obtains a Certificate of Completion, as required by law, which allows that person to assist in the activities of daily living and emergency first aid, and who must be supervised by a registered nurse from the home health agency.

(30) "Physician" may be defined by including words such as "duly qualified physician" or "duly licensed physician." The use of such terms requires an insurer to recognize and to accept, to the extent of its obligation under the contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided pursuant to applicable laws as required by Section 31A-22-618.

(31) "Plan of Care" shall mean a written plan based on assessment data or physician orders that identifies the patient's needs, who will provide needed services and how often, treatment goals, and anticipated outcomes.

(32) "Preexisting Condition" may not be defined to be more restrictive than the following:

(a) Specified Disease Insurance. "Preexisting condition" shall mean a condition for which medical advice, diagnosis, care or treatment was recommended or received from a physician within the six month period preceding the effective date of coverage of an insured person.

(b) Other Health Coverage. Unless the coverage is considered a "health benefit plan" as defined in Section 31A-1-301, "preexisting condition" shall mean the existence of symptoms which would cause an ordinarily prudent person to seek diagnosis, care or treatment within a two year period preceding the effective date of the coverage of the insured person or a condition for which medical advice or treatment was recommended by a physician or received from a physician within a two year period preceding the effective date of the coverage of the insured person.

(33) "Probationary Period" shall mean the period of time following the date of issuance or effective date of the policy before coverage begins for all or certain conditions.

(34) "Residential Health Care Facility" shall mean a publicly or privately operated and maintained facility providing personal care to residents who require protected living arrangements.

(35) "Residual Disability" shall be defined in relation to the individual's reduction in earnings and may be related either to the inability to perform some part of the "major," "important," or "essential duties" of employment or occupation, or to the inability to perform all usual business duties for as long as is usually required. A policy which provides for residual disability benefits may require a qualification

period, during which the insured shall be continuously totally disabled before residual disability benefits are payable. The qualification period for residual benefits may be longer than the elimination period for total disability. In lieu of the term "residual disability," the insurer may use "proportionate disability" or other term of similar import, which in the opinion of the commissioner adequately and fairly describes the benefit.

(36) "Respite Care" shall mean provision of temporary support to the primary caregiver of the aged, disabled, or handicapped individual insured, by taking over the tasks of that person for a limited period of time. The insured may receive care in the home, or other appropriate community location, or in an appropriate institutional setting.

(37)(a) "Scientific evidence" means:

(i) scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff; or

(ii) findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes.

(b) Scientific evidence shall not include published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer or a single study without other supportable studies.

(38) "Sickness."

(a) The definition of this term may not be more restrictive than the following: "Sickness means sickness or disease of an insured person which manifests itself after the effective date of insurance and while the insurance is in force."

(b) A definition of sickness may provide for a probationary period, which may not exceed 30 days from the effective date of the coverage of the insured person.

(c) The definition may be further modified to exclude sickness or disease for which benefits are paid under any worker's compensation, occupational disease, employer's liability or similar law.

(39) "Skilled Nursing Care" shall mean nursing services provided by, or under the supervision of, an R.N. Such care shall be for the purpose of treating the condition for which the confinement is required and not for the purpose of providing intermediate or custodial care.

(40) "Therapist" may be defined as a professionally trained or duly licensed or registered person, such as a physical therapist, occupational therapist, or speech therapist, who is skilled in applying treatment techniques and procedures under the general direction of a physician.

(41) "Total Disability" may not be more restrictive than one requiring that the individual who is totally disabled not be engaged in employment or occupation for which he is or becomes qualified by reason of education, training or experience.

(a) Total disability may be defined in relation to the inability of the person to perform duties but may not be based on an individual's inability to:

(i) perform "any occupation whatsoever," "any occupational duty," or "any and every duty of his occupation," or

(ii) engage in any training or rehabilitation program.

(b) A total disability definition or provision may not exclude benefits based on the individual's ability to engage in any employment or occupation for wage or profit.

(42) "Usual and Customary" shall mean the reasonable, usual and customary charges for services and supplies in the community where such services and supplies were provided.

(43) "Waiting Period" shall mean "Elimination Period."

R590-126-4. Prohibited Policy Provisions.

(1) Probationary periods. No policy may contain provisions establishing either a probationary or a waiting period during which coverage is not provided under the policy, except as follows in Subsections (a) and (b).

(a) A probationary period of 30 days may apply under the definition of "sickness" contained in Subsection R590-126-3(38).

(b) A probationary period of up to 12 months may be applied to the following specified diseases or conditions and losses resulting from:

(i) hernia;

(ii) disorder of reproductive organs;

(iii) varicose veins;

(iv) adenoids

(v) appendix; or

(vi) tonsils.

(c) The 12 month exception of Subsection (1)(b) may not be applicable where such specified diseases or conditions are treated on an emergency basis.

(d) Condition imposed waiting period in a health benefit plan must be reduced by any applicable creditable coverage.

(e) Accident policies may not contain probationary or waiting periods.

(f) Subsection (1) does not apply to specified disease policies.

(2) Dividend coverage.

(a) A policy or endorsement for additional coverage may not be issued as a dividend unless an equivalent cash payment is offered as an alternative to the dividend policy or endorsement. A dividend policy or endorsement for additional coverage shall not be issued for an initial term of less than six months.

(b) The initial renewal subsequent to the issuance of a policy or endorsement as a dividend shall clearly disclose that the policyholder is renewing the coverage that was provided as a dividend for the previous term and that the renewal is optional.

(3) Preexisting conditions. A policy shall not exclude coverage for a loss due to a preexisting condition for a period greater than 12 months, six months for specified disease policies, following the issuance of the policy or certificate where the application or enrollment form for the insurance does not seek disclosure of prior illness, disease or physical conditions or prior medical care and treatment and the preexisting condition is not specifically excluded by the terms of the policy or certificate. Any preexisting condition waiting period must be reduced by any applicable creditable coverage.

(4) Return of premium. A disability income policy may contain a "return of premium" or "cash value benefit" so long as the return of premium or cash value benefit is not reduced by an amount greater than the aggregate of claims paid under the policy; and the insurer demonstrates that the reserve basis for the policies is adequate. No other policy subject to this rule shall provide a return of premium or cash value benefit, except return of unearned premium upon termination or suspension of coverage, retroactive waiver of premium paid during disability, payment of dividends on participating policies, or experience rating refunds.

(5) Hospital indemnity. Policies providing hospital confinement indemnity coverage shall not contain provisions excluding coverage because of confinement in a hospital operated by the federal government.

(6) Limitations or exclusions. Unless otherwise required, a policy shall not limit or exclude coverage by type of illness, accident, treatment or medical condition, except as follows:

(a) preexisting conditions or diseases, except for congenital anomalies of a covered dependent child;

(b) mental or emotional disorders, alcoholism and drug addiction;
(c) pregnancy, except for complications of pregnancy;
(d) illness, treatment or medical condition arising out of;
(i) active participation in war or act of war, whether declared or undeclared;
(ii) active participation in a felony, riot or insurrections;
(iii) service in the armed forces or units auxiliary to it;
(iv) suicide, sane or insane, attempted suicide, or intentionally self-inflicted injury;
(v) aviation;
(vi) with respect to short-term nonrenewable policies, interscholastic sports; and
(vii) with respect to disability income protection policies, incarceration;
(e) cosmetic surgery, except that "cosmetic surgery" shall not include reconstructive surgery when the service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part, and reconstructive surgery because of congenital disease or anomaly of a covered dependent child that has resulted in a functional defect;
(f) foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain or symptomatic complaints of the feet. The exclusion of routine foot care does not apply to cutting or removal of corns, calluses, or nails when provided to a person who has a systemic disease, such as diabetes with peripheral neuropathy or circulatory insufficiency, of such severity that unskilled performance of the procedure would be hazardous;
(g) treatment provided in a government hospital, except for Hospital Indemnity policies;
(h) benefits provided under:
(i) Medicare or other governmental program, except Medicaid;
(ii) a state or federal workmen's compensation; or
(iii) employers liability or occupational disease law; or
(iv) motor vehicle no-fault law. When the covered person is required by law to have no-fault coverage, the exclusion applies to charges up to the minimum coverage required by law whether or not such coverage is in effect;
(j) services rendered by employees of hospitals, laboratories or other institutions;
(k) services performed by a member of the covered person's immediate family;
(l) services for which no charge is normally made in the absence of insurance;
(m) dental care or treatment;
(n) corrective lenses, and examination for the prescription or fitting thereof, but policies may not exclude required lens implants following cataract surgery;
(o) hearing aids, and examination for the prescription or fitting thereof;
(p) rest cures;
(q) custodial care, except for long-term care policies;
(r) transportation;
(s) routine physical examinations;
(t) territorial limitations outside the United States; or
(u) others as may be approved by the commissioner.
(7) Acts of terrorism or nuclear release or other terms of similar import may not be excluded.
(8) Waivers. This rule shall not impair or limit, except as limited for policies or certificates subject to 31A-30, the use of waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases, physical condition or extra hazardous

activity. Where waivers are required as a condition of issuance, renewal or reinstatement, signed acceptance by the insured is required.

(9) Commissioner authority. Policy provisions precluded in this section shall not be construed as a limitation on the authority of the commissioner to disapprove other policy provisions that in the opinion of the commissioner are unjust, unfair or unfairly discriminatory to the policyholder, beneficiary or a person insured under the policy.

R590-126-5. General Requirements.

(1) Policy definitions. No policy subject to this rule may contain definitions respecting the matters defined in Section R590-126-3 unless such definitions comply with the requirements of that section.

(2) Rights of spouse. The following provisions apply to policies, which provide coverage to a spouse of the insured:

(a) A policy may not provide for termination of coverage of the spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than for nonpayment of premium.

(b) A policy shall provide that in the event of the insured's death the spouse of the insured shall become the insured.

(c) The age of the younger spouse shall be used as the basis for meeting the age and durational requirements of the noncancellation or renewal provisions of the policy. However, this requirement may not prevent termination of coverage of the older spouse upon attainment of stated age limit in the policy, so long as the policy may be continued in force as to the younger spouse to the age or for durational period as specified in said definition.

(3) Renewability.

(a) The terms "noncancellable," "guaranteed renewable," "noncancellable and guaranteed renewable," "conditionally renewable," "collectively renewable," or "optionally renewable" shall not be used without further explanatory language in accordance with the disclosure requirements of Subsection R590-126-6(1)(c).

(b) An accident and health or accident-only policy that provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from accident or health may provide that the insured has the right to continue the policy only to age 60 if, at age 60, the insured has the right to continue the policy in force at least to age 65 while actively and regularly employed.

(4) Cancellation and renewal.

(a) Noncancellable. The terms "noncancellable" or "noncancellable and guaranteed renewable" may be used only in a policy that the insured has the right to continue in force by the timely payment of premiums until the age of 65, during which period the insurer has no right to make unilaterally any change in any provision of the policy to the detriment of the insured.

(b) Guaranteed renewable. Except as provided above, the term "guaranteed renewable" may be used only in a policy which the insured has the right to continue in force by the timely payment of premiums at least to age 65, during which period the insurer has no right to make any unilateral change to the detriment of the insured while the policy is in force, except that the insurer may make changes in premium rates by classes.

(c) Conditionally renewable. The term "conditionally renewable" may be used only in a policy which the insured may have the right to continue in force by the timely payment of premiums at least to age 65, during which period the insurer has no right to make any unilateral change to the detriment of the insured while the policy is in force. However, the insurer, at its option, and by timely notice, may decline renewal for reasons stated in the policy, or may make changes in premium rates by classes.

(d) Collectively renewable. The term "collectively renewable" may be used only in a policy which the insured may have the right to continue in force by the timely payment of premiums at least to age 65, during which period the insurer has no right to make any unilateral change in any provision of the policy while the policy is in force. However, the insurer, at its option, and by timely notice, may decline renewal of all policies of the same classification issued in this state, or may make changes in premium rates by classes.

(e) Optionally renewable. The term "optionally renewable" may be used only in a policy which the insured may have the right to continue in force by the timely payment of premiums at least to age 65, during which period the insurer has no right to make any unilateral change in any provision of the policy while the policy is in force. However, the insurer, at its option, and by timely notice, may decline renewal of the policy or may make changes in premium rates by classes.

(f) Notice of nonrenewal shall be given as required under 31A-30-107 if applicable, or 90 days if 31A-30-107 doesn't apply and the policy allows for nonrenewal.

(g) Health benefit plans can only be discontinued or nonrenewed as provided for in Title 31A Chapter 8, 22 and 30.

(h) A policy may not be cancelled or nonrenewed solely on the grounds of deterioration of health.

(5) Optional insureds. When accidental death and dismemberment coverage is part of the accident and health insurance coverage offered under the contract, the insured shall have the option to include all insureds under the coverage and not just the principal insured.

(6) Military service. If a policy contains a status-type military service exclusion or a provision that suspends coverage during military service, the policy shall provide, upon receipt of written request, for refund of premiums as applicable to the person on a pro rata basis.

(7) Pregnancy benefit extension. In the event the insurer cancels or refuses to renew a policy providing pregnancy benefits shall provide for an extension of benefits as to the pregnancy commencing while the policy is in force and for which benefits would have been payable had the policy remained in force.

(8) Post hospital admission requirement. A policy providing convalescent or extended care benefits following hospitalization shall not condition the benefits upon admission to the convalescent or extended care facility within a period of less than 14 days after discharge from the hospital.

(9) Transplant donor coverage. A policy providing coverage for the recipient in a transplant operation shall also provide reimbursement of any medical expenses of a live donor to the extent that benefits remain and are available under the recipient's policy or certificate, after benefits for the recipient's own expenses have been paid.

(10) Recurrent disability. A policy may contain a provision relating to recurrent disabilities, but a provision relating to recurrent disabilities shall not specify that a recurrent disability be separated by a period greater than 6 months.

(11) Time limit for occurrence of loss.

(a) Accidental death and dismemberment benefits shall be payable if the loss occurs within 180 days from the date of the accident, irrespective of total disability.

(b) Disability income benefits, if provided, shall not require the loss to commence less than 30 days after the date of accident, nor shall any policy that the insurer cancels or refuses to renew require that it be in force at the time disability commences if the accident occurred while the coverage was in force.

(12) Specific dismemberment benefits shall not be in lieu of other benefits unless the specific benefit equals or exceeds the other benefits.

(13) Termination of the policy shall be without prejudice to a continuous loss that commenced while the policy or certificate was in force. The continuous total disability of the insured may be a condition for the extension of benefits beyond the period the policy was in force, limited to the duration of the benefit period, if any, or payment of the maximum benefits.

(14) A policy providing coverage for fractures or dislocations may not provide benefits only for "full or complete" fractures or dislocations.

(15) Specified disease, also known as critical illness, dread disease, etc., insurance sold in conjunction with another insurance product, including but not limited to life insurance or annuities shall be in the form of a separate endorsement complying with all provisions of this rule. Specified Disease insurance shall not be incorporated into a life insurance policy or annuity contract.

(16) Notice of premium change. A notice of change in premium shall be given no fewer than 30 days before the renewal date.

R590-126-6. Required Disclosure Provisions.

(1) Applications.

(a) Questions used to elicit health condition information may not be vague and must reference a reasonable time frame in relation to the health condition.

(b) Completed applications shall be attached and made part of the policy.

(c) All applications for coverages specified in Section R590-126-7, except Subsection R590-126-7(5), shall contain a prominent statement by type, stamp or other appropriate means in either contrasting color or in boldface type at least equal to the size type used for the headings or captions of sections of the application and in close conjunction with the applicant's signature block on the application as follows:

"The (policy) (certificate) provides limited benefits. Review your (policy)(certificate) carefully."

(d) All applications for dental and vision plans shall contain a prominent statement by type, stamp or other appropriate means in either contrasting color or in boldface type at least equal to the size type used for the headings or captions of sections of the application and in close conjunction with the applicant's signature block on the application as follows:

"The (policy) (certificate) provides (dental) (vision) benefits only. Review your (policy) (certificate) carefully."

(2) Renewal and nonrenewal provisions. Accident and health insurance shall include a renewal, continuation or nonrenewal provision. The language or specification of the provision shall be consistent with the type of contract to be issued. The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

(3) Endorsement acceptance.

(a) Except for endorsements by which the insurer effectuates a request made in writing by the policyholder, all endorsements added to a policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the policyholder.

(b) After the date of policy issue, any endorsement that increases benefits or coverage with a concurrent increase in premium during the policy term, must be agreed to in writing signed by the policyholder, except if the increased benefits or coverage is required by law.

(4) Additional premium. Where a separate additional premium is charged for benefits provided in connection with endorsements, the premium charge shall be set forth in the policy or certificate.

(5) Benefit payment standard. A policy or certificate that provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import shall include a definition of the terms and an explanation of the terms in its accompanying outline of coverage.

(6) Preexisting conditions. If a policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and be labeled as "Preexisting Condition Limitations."

(7) Age limitation. If age is to be used as a determining factor for reducing the maximum aggregate benefits made available in the policy or certificate as originally issued, that fact shall be prominently set forth in the outline of coverage and schedule page.

(8) Conversion privilege. If a policy or certificate contains a conversion privilege, it shall comply, in substance, with the following: The caption of the provision shall read "Conversion Privilege" or words of similar import. The provision shall indicate the persons eligible for conversion, the circumstances applicable to the conversion privilege, including any limitations on the conversion, and the person by whom the conversion privilege may be exercised. The provision shall specify the benefits to be provided on conversion or may state that the converted coverage will be as provided on a policy form then being used by the insurer for that purpose.

(9) Specified Disease Insurance buyers guide. An insurers, except a direct response insurer, shall give a person applying for specified disease insurance, a buyer's guide approved by the commissioner at the time of application enrollment and shall obtain recipient's written acknowledgement of the guide's delivery. A direct response insurer shall provide the buyer's guide upon request, but not later than the time that the policy or certificate is delivered.

(10) (a) An accident-only policy or certificate shall contain a prominent statement on the first page of the policy or certificate, in either contrasting color or in boldface type at least equal to the size of type used for headings or captions of sections in the policy or certificate, as follows:

Notice to Buyer: This is an accident-only (policy)(certificate) and it does not pay benefits for loss from sickness. Review your (policy)(certificate) carefully.

(b) Accident-only policies or certificates that provide coverage for hospital or medical care shall contain the following statement in addition to the notice above:

This (policy)(certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses.

(11) Specified disease policies or certificates shall contain on the first page or attached to it in either contrasting color or in boldface type, at least equal to the size type used for headings or captions of sections in the policy or certificate, a prominent statement as follows:

Notice to Buyer: This is a specified disease (policy) (certificate). This (policy) (certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses. Read your (policy) (certificate) carefully with the outline of coverage and the buyer's guide.

(12) Hospital confinement indemnity and limited benefit health policies or certificates shall display prominently by type, stamp or other appropriate means on the first page of the policy or certificate, or attached to it, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections in the policy or certificate the following:

Notice to Buyer: This is a (hospital confinement indemnity) (limited benefit health) (policy)(certificate). This (policy)(certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses.

(13) Basic hospital, basic medical-surgical, basic hospital-medical surgical, and basic medical expense policies and certificates shall display prominently by type, stamp or other appropriate means on the first page of the policy or certificate, or attached to it, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections in the policy or certificate the following:

Notice to Buyer: This is a (basic hospital) (basic medical-surgical) (basic hospital/medical-surgical) (basic medical) expense (policy)(certificate). This (policy)(certificate) provides limited benefits and should not be considered a substitute for comprehensive health insurance coverage.

(14) Dental and vision plan policies and certificates shall display prominently by type or stamp on the first page of the policy or certificate, or attached to it, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections in the policy or certificate the following:

Notice to Buyer: This (policy) (certificate) provides (dental) (vision) benefits only.

R590-126-7. Accident and Health Minimum Standards for Benefits.

The following minimum standards for benefits are prescribed for the categories of coverage noted in the following subsections. Accident and health insurance policies or certificates subject to this rule shall not be delivered or issued for delivery in this state unless it meets the required minimum standards for the specified categories. This section shall not preclude the issuance of any policy or contract combining two or more categories set forth in Subsections 31A-22-605(4)(b) and (5).

Minimum benefits for coverages listed in this section shall include coverage of inborn metabolic errors as required by Sections 31A-22-623 and R590-194, and benefits for diabetes as required by Sections 31A-22-626 and R590-200, if applicable.

(1) Basic Hospital Expense Coverage.

Basic hospital expense coverage is a policy of accident and health insurance that provides coverage for a period of not less than 31 days during a continuous hospital confinement for each person insured under the policy. Benefits provided under this subsection may be provided subject to a combined deductible amount not in excess of \$200 and provides at least the following:

(a) daily hospital room and board in an amount not less than:

(i) 80% of the charges for semiprivate room accommodations; or

(ii) \$100 per day;

(b) miscellaneous hospital services for expenses incurred for the charges made by the hospital for services and supplies that are customarily rendered by the hospital and provided for use only during any one period of confinement in an amount not less than either:

(i) 80% of the charges incurred up to at least \$3000; or

(ii) ten times the daily hospital room and board benefits;

(c) hospital outpatient services consisting of:
(i) hospital services on the day surgery is performed;
(ii) hospital services rendered within 72 hours after injury, in an amount not less than \$250 per accident; and
(iii) x-ray and laboratory tests to the extent that benefits for the services would have been provided if rendered to an in-patient of the hospital to an extent not less than \$200.

(2) Basic Medical-Surgical Expense Coverage.

Basic medical-surgical expense coverage is a policy of accident and health insurance that provides coverage for each person insured under the policy for the expenses incurred for the necessary services rendered by a physician for treatment of an injury or sickness for at least the following:

(a) surgical services:

(i) in amounts not less than those provided on a Current Procedure Terminology (CPT) based relative value fee schedule, up to a maximum of at least \$1000 for one procedure; or

(ii) 80% of the reasonable charges.

(b) anesthesia services, consisting of administration of necessary general anesthesia and related procedures in connection with covered surgical service rendered by a physician other than the physician, or the physician assistant, performing the surgical services:

(i) in an amount not less than 80% of the reasonable charges; or

(ii) 15% of the surgical service benefit; and

(c) in-hospital medical services, consisting of physician services rendered to a person who is a bed patient in a hospital for treatment of sickness or injury other than that for which surgical care is required, in an amount not less than:

(i) 80% of the reasonable charges; or

(ii) \$50 per day for not less than 21 days during one period of confinement.

(3) Basic Hospital/Medical-Surgical Expense Coverage.

Basic hospital/medical-surgical expense coverage is a policy of accident and health which combines coverage and must meet the requirements of both Subsections (1) and (2).

(4) Hospital Confinement Indemnity Coverage.

Hospital confinement indemnity coverage is a policy of accident and health insurance that provides daily benefits for hospital confinement on an indemnity basis.

(a) Coverage includes an indemnity amount of not less than \$50 per day and not less than 31 days during each period of confinement for each person insured under the policy.

(b) Coverage shall not be excluded due to a preexisting condition for a period greater than 12 months following the effective date of coverage of an insured person unless:

(i) the preexisting condition is specifically and expressly excluded; and

(ii) the coverage was offered and marketed as supplemental health insurance and not as a substitute for hospital or medical expense insurance or major medical expense insurance.

(5) Major Medical Expense Coverage.

Major medical expense coverage is a policy of accident and health insurance that provides hospital, medical and surgical expense coverage.

(a) An aggregate maximum of not less than \$1,000,000 may be applied and include:

(i) coinsurance percentage per year per covered person not to exceed 50% of covered charges;

(ii) coinsurance out-of-pocket maximum after any deductibles not to exceed \$20,000 per year; or

(iii) deductibles stated on per person, per family, per illness, per benefit period, or per year basis.

(b) A combination of the bases provided under Subsections(5)(a)(i), (ii), and (iii) may not exceed 5% of the aggregate maximum limit under the policy for each covered person.

(c) The following services must be provided:

(i) daily hospital room and board expenses subject only to limitations based on average daily cost of the semiprivate room rate in the area where the insured resides;

(ii) miscellaneous hospital services;

(iii) surgical services;

(iv) anesthesia services;

(v) in-hospital medical services;

(vi) out-of-hospital care, consisting of physician services rendered on an ambulatory basis where coverage is not provided elsewhere in the policy for diagnosis and treatment of sickness or injury, diagnostic x-ray, laboratory services, radiation therapy, and hemodialysis ordered by a physician; and

(vii) at least three of the following additional benefits must also be provided:

(A) in-hospital private duty registered nurse services;

(B) convalescent nursing home care;

(C) diagnosis and treatment by a radiologist or physiotherapist;

(D) rental of special medical equipment, as defined by the insurer in the policy;

(E) artificial limbs or eyes, casts, splints, trusses or braces;

(F) treatment for functional nervous disorders, and mental and emotional disorders; or

(G) out-of-hospital prescription drugs and medications.

(d) If the policy is written to complement underlying basic hospital expense and basic medical-surgical expense coverage, the deductible may be increased by the amount of the benefits provided by the underlying coverage.

(e) The minimum benefits required by Subsection (5) may be subject to all applicable deductibles, coinsurance and general policy exceptions and limitations.

(f) A major medical expense policy may also have special or internal limitations for prescription drugs, nursing facilities, intensive care facilities, mental health treatment, alcohol or substance abuse treatment, transplants, experimental treatments, mandated benefits required by law and those services covered under Subsection (5)(c) and other such special or internal limitations as are approved by the commissioner.

(g) Except as authorized by this subsection through the application of special or internal limitations, a major medical expense policy must be designed to cover, after any deductibles or coinsurance provisions are met, the usual, customary and reasonable charges, as determined consistently by the carrier and as subject to approval by the commissioner, or another rate agreed to between the insurer and provider, for covered services up to the lifetime policy maximum.

(6) Basic Medical Expense Coverage.

Basic medical expense coverage is a policy of accident and health insurance that provides hospital, medical and surgical expense coverage.

(a) An aggregate maximum of not less than \$500,000 may be applied, and may include:

(i) coinsurance percentage per year per covered person, not to exceed 50% of covered charges;

(ii) coinsurance out-of-pocket maximum after any deductibles, not to exceed \$25,000 per year; or

(iii) deductibles stated on per person, per family, per illness, per benefit period, or per year basis.

(b) A combination of the bases provided in Subsection (6)(a)(i), (ii) and (iii) may not exceed 10% of the aggregate maximum limit under the policy.

(c) Following services must be covered:

(i) daily hospital room and board expenses subject only to limitations based on average daily cost of the semiprivate room rate in the area where the insured resides or such other rate agreed to between the insurer and provider for a period of not less than 31 days during continuous hospital confinement;

(ii) miscellaneous hospital services;

(iii) surgical services;

(iv) anesthesia services;

(v) in-hospital medical services;

(vi) out-of-hospital care, consisting of physicians' services rendered on an ambulatory basis where coverage is not provided elsewhere in the policy for diagnosis and treatment of sickness or injury, diagnostic x-ray, laboratory services, radiation therapy and hemodialysis ordered by a physician; and

(vii) three of the following additional benefits must also be provided:

(A) in-hospital private duty graduate registered nurse services;

(B) convalescent nursing home care;

(C) diagnosis and treatment by a radiologist or physiotherapist;

(D) rental of special medical equipment, as defined by the insurer in the policy;

(E) artificial limbs or eyes, casts, splints, trusses or braces;

(F) treatment for functional nervous disorders, and mental and emotional disorders; or

(G) out-of-hospital prescription drugs and medications.

(d) If the policy is written to complement underlying basic hospital expense coverage and basic medical-surgical expense coverage, the deductible may be increased by the amount of the benefits provided by the underlying basic coverage.

(e) The minimum benefits required by Subsection (6) may be subject to all applicable deductibles, coinsurance and general policy exceptions and limitations.

(f) Basic medical expense policies may also have special or internal limitations for prescription drugs, nursing facilities, intensive care facilities, mental health treatment, alcohol or substance abuse treatment, transplants, experimental treatments, mandated benefits required by law and those services covered under Subsection (6)(c) and other such special or internal limitations as are authorized or approved by the commissioner.

(g) Except as authorized by this subsection through the application of special or internal limitations, basic medical expense policies must be designed to cover, after any deductibles or coinsurance provisions are met, the usual customary and reasonable charges, as determined consistently by the carrier and as subject to approval by the commissioner, or another rate agreed to between the insurer and provider, for covered services up to the lifetime policy maximum.

(7) Disability Income Protection Coverage.

Disability income protection coverage is a policy of accident and health insurance that provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from either sickness or injury or a combination of them that:

(a) provides that periodic payments that are payable at ages after 62 and reduced solely on the basis of age are at least 50% of amounts payable immediately prior to 62;

(b) contains an elimination period no greater than:

(i) 90 days in the case of a coverage providing a benefit of one year or less;

(ii) 180 days in the case of coverage providing a benefit of more than one year but not greater than two years; or

(iii) 365 days in all other cases during the continuance of disability resulting from sickness or injury;

(c) has a maximum period of time for which it is payable during disability of at least six months except in the case of a policy covering disability arising out of pregnancy, childbirth or miscarriage in which case the period for the disability may be one month. No reduction in benefits shall be put into effect because of an increase in Social Security or similar benefits during a benefit period.

(d) Where a policy provides total disability benefits and partial disability benefits, only one elimination period may be required.

(8) Accident Only Coverage.

Accident only coverage is a policy of accident and health insurance that provides coverage, singly or in combination, for death, dismemberment, disability or hospital and medical care caused by accident. Accidental death and double dismemberment amounts under the policy shall be at least \$1,000 and a single dismemberment amount shall be at least \$500. An accident-only policy providing benefits that vary according to the type of accidental cause shall prominently set forth in the policy and outline of coverage the circumstances under which benefits are payable that are lesser than the maximum amount payable under the policy.

(9) Specified Accident Coverage.

Specified accident coverage is a policy of accident and health insurance that provides coverage for a specifically identified kind of accident, or accidents, for each person insured under the policy for accidental death or accidental death and dismemberment, combined with a benefit amount not less than \$2,000 for accidental death, \$2,000 for double dismemberment and \$1000 for single dismemberment.

(10) Specified Disease Coverage.

Specified disease coverage is a policy of accident and health insurance that provides coverage for the diagnosis and treatment of a specifically named disease or diseases. Any such policy shall meet the general provisions set forth in Subsection (10). The policy shall also meet the minimum standards set forth in the applicable Subsections (10)(b), (c) or (d).

(a) General Provisions.

(i) Preexisting conditions. A specified disease policy, regardless of whether the basis of issuance is a detailed application form, a simplified application form, or an enrollment form, may not deny a claim for loss which occurs more than six months after the effective date of coverage due to a preexisting condition. Such policy may not define a preexisting condition more restrictively than the definition in Subsection R590-126-3(32)(a).

(ii) Policy designation. Policies covering a single specified disease or combination of specified diseases may not be sold or offered for sale other than as specified disease coverage under this section.

(iii) Medical diagnosis. Any policy issued pursuant to this section which conditions payment upon pathological diagnosis of a covered disease, shall also provide that if a pathological diagnosis is medically inappropriate, a clinical diagnosis will be accepted.

(iv) Related conditions. Notwithstanding any other provision of this rule, specified disease policies shall provide benefits to any covered person, not only for the specified disease, but also for any other condition or disease directly caused or aggravated by the specified disease or the treatment of the specified disease.

(v) Renewability. Specified disease coverage shall be at least Guaranteed Renewable.

(vi) Probationary period. No policy issued pursuant to this section may contain either an elimination, waiting, or probationary period greater than 30 days.

(vii) Medicaid disclaimer. Any application for specified disease coverage shall contain a statement above the signature of the applicant that no person to be covered for specified disease is also covered by any Title XIX program, designated as Medicaid or any similar name. Such statement may be combined with any other statement for which the insurer may require the applicant's signature.

(viii) Medical care and charges. Payments may be conditioned upon a covered person receiving medically necessary care, prescribed by a physician, given in a medically appropriate location, under a medically accepted Plan of Care. Payment may be limited to amounts not in excess of usual and customary charges.

(ix) Other insurance. Benefits for specified disease coverage shall be paid regardless of other coverage.

(x) Retroactive application of coverage. After the effective date of the coverage, or the conclusion of an applicable probationary period, if any, subject to Subsection (10)(a)(vi) benefits shall begin with the first day of care or confinement, if such care or confinement is for a covered disease, even though the diagnosis is made at some later date.

(b) Minimum Expense Incurred Benefits. The following minimum benefit standards apply to specified disease coverage on an expense incurred basis.

(i) Policy limits. A deductible amount not to exceed \$250, an aggregate benefit limit of not less than \$25,000 and a benefit period of not fewer than three years.

(ii) Copayment. Covered services provided on an outpatient basis may be subject to a copayment which may not exceed 20%.

(iii) Covered Services. Covered services shall include the following:

(A) hospital room and board and any other hospital-furnished medical services or supplies;

(B) treatment by, or under the direction of, a legally qualified physician or surgeon;

(C) private duty nursing services of a registered nurse (R.N.), or licensed practical nurse (L.P.N.);

(D) x-ray, radium, chemotherapy and other therapy procedures used in diagnosis and treatment;

(E) blood transfusions, and the administration thereof, including expense incurred for blood donors;

(F) drugs and medicines prescribed by a physician;

(G) professional ambulance for local service to or from a local hospital;

(H) the rental of any respiratory or other mechanical apparatuses;

(I) braces, crutches and wheelchairs as are deemed necessary by the attending physician for the treatment of the disease;

(J) emergency transportation if, in the opinion of the attending physician, it is necessary to transport the insured to another locality for treatment of the disease;

(K) home health care with a written prescribed plan of care;

(L) physical, speech, hearing and occupational therapy;

(M) special equipment including hospital bed, toilette, pulleys, wheelchairs, aspirator, chux, oxygen, surgical dressings, rubber shields, colostomy and ileostomy appliances;

(N) prosthetic devices including wigs and artificial breasts; and

(O) nursing home care for non-custodial services.

(c) Minimum Per Diem Benefits. The following minimum benefit standards apply to coverages written on a per diem indemnity basis.

(i) Covered services shall include the following:

(A) hospital confinement benefit with a fixed-sum payment of at least \$300 for each day of hospital confinement for at least 365 days, with no deductible amount permitted;

(B) outpatient benefit with a fixed-sum payment equal to one half the hospital inpatient benefits for each day of hospital or non-hospital outpatient surgery, radiation therapy and chemotherapy, for at least 365 days of treatment; and

(C) nursing home or home health care benefit tied to confinement in a nursing home or to receipt of home health care are optional. If a policy offers these benefits, they must equal the following:

(I) a fixed-sum payment equal to one-half the hospital inpatient benefit for each day of skilled nursing home confinement for at least 180 days; and

(II) a fixed-sum payment equal to one-fourth the hospital inpatient benefit for each day of home health care for at least 180 days.

(ii) Notwithstanding any other provision of this rule, any restriction or limitation applied to the benefits in Subsections (10)(b)(i)(C)(I) and (II), whether by definition or otherwise, may not be more restrictive than those under Medicare.

(d) Principal Sum Benefits.

(i) Benefits shall be payable as a fixed, one-time payment, made within 30 days of submission to the insurer, of proof of diagnosis of the specified disease. Dollar benefits shall be offered for sale only in even increments of \$1,000.

(ii) Where coverage is advertised or otherwise represented to offer generic coverage of a disease or diseases, e.g., "cancer insurance," "heart disease insurance," the same dollar amounts shall be payable regardless of the particular subtype of the disease, e.g., lung or bone cancer, with one exception. In the case of clearly identifiable subtypes with significantly lower treatment costs, e.g., skin cancer, lesser amounts may be payable so long as the policy clearly differentiates that subtype and its benefits.

(11) Catastrophic Coverage.

Catastrophic coverage is a policy of accident and health insurance that:

(a) provides benefits for medical expenses incurred by the insured to an aggregate maximum of not less than \$1,000,000;

(b) contains no separate internal dollar limits;

(c) may be subject to a policy deductible which does not exceed the greater of 2% of the policy limit or the amount of other in-force accident and health insurance coverage for the same medical expenses; and

(d) contains no percentage participation or coinsurance clause for expenses which exceed the deductible.

(12) Limited Benefit Health Coverage.

Limited benefit health coverage is a policy of accident and health insurance, other than a policy covering only a specified disease or diseases, that provides benefits that are less than the minimum standards for benefits required under Subsections (1), (2), (3), (4), (5), (6), (8), (9), (10) and (11). These policies or contracts may be delivered or issued for delivery in this state only with the outline of coverage required by Section R590-126-8.

(13) The following policies are considered major medical expense coverage and shall follow the requirements of Subsections (5) and R590-126-8(5):

(a) basic hospital expense and hospital confinement indemnity; or

(b) basic medical-surgical and hospital confinement indemnity; or

(c) basic hospital expense, basic medical-surgical, and hospital confinement indemnity.

R590-126-8. Outline of Coverage Requirements.

(1) Basic Hospital Expense Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(1). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE I

(COMPANY NAME)
 BASIC HOSPITAL EXPENSE COVERAGE
 THIS (POLICY) (CERTIFICATE) PROVIDES LIMITED BENEFITS AND
 SHOULD NOT BE CONSIDERED A SUBSTITUTE FOR
 COMPREHENSIVE HEALTH INSURANCE COVERAGE

OUTLINE OF COVERAGE

(a) Read Your (Policy)(Certificate) Carefully--This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY)(CERTIFICATE) CAREFULLY!

(b) Basic hospital coverage is designed to provide, to persons insured, coverage for hospital expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services and hospital outpatient services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for physicians or surgeons fees or unlimited hospital expenses.

(c) (A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy, in the following order:

- daily hospital room and board;
- miscellaneous hospital services; and
- hospital out-patient services; and
- other benefits, if any.)

(d) (A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefits described in Subsection (c).)

(e) (A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.)

(2) Basic Medical-Surgical Expense Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(2). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE II

(COMPANY NAME)
 BASIC MEDICAL-SURGICAL EXPENSE COVERAGE
 THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS AND
 SHOULD NOT BE CONSIDERED A SUBSTITUTE FOR
 COMPREHENSIVE HEALTH INSURANCE COVERAGE

OUTLINE OF COVERAGE

(a) Read Your (Policy)(Certificate) Carefully--This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control your policy. The policy itself sets forth in detail the rights and obligations of both you and your insurance

company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!

(b) Basic medical-surgical expense coverage is designed to provide, to persons insured, coverage for medical-surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for surgical services, anesthesia services, and in-hospital medical services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for hospital expenses fees or unlimited medical-surgical expenses.

(c) (A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy, in the following order:

- surgical services;
- anesthesia services;
- in-hospital medical services; and
- other benefits, if any.)

(d) (A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in Subsection (c).)

(e) (A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.)

(3) Basic Hospital/Medical-Surgical Expense Coverage.
 An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsections R590-126-7(1) and (2). The items included in the outline of coverage must appear in the sequence prescribed.

TABLE III

(COMPANY NAME)
 BASIC HOSPITAL-MEDICAL-SURGICAL EXPENSE COVERAGE
 THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS AND
 SHOULD NOT BE CONSIDERED A SUBSTITUTE FOR
 COMPREHENSIVE HEALTH INSURANCE COVERAGE

OUTLINE OF COVERAGE

(a) Read Your (Policy)(Certificate) Carefully--This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!

(b) Basic hospital-medical-surgical expense coverage is designed to provide, to persons insured, coverage for hospital and medical-surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services, hospital outpatient services, surgical services, anesthesia services, and in-hospital medical services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for unlimited hospital or medical surgical expenses.

(c) (A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy, in the following order:

- daily hospital room and board;
- miscellaneous hospital services;
- hospital outpatient services;
- surgical services;
- anesthesia services;
- in-hospital medical services; and

other benefits, if any.)
 (d) (A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in Subsection (c).)

(e) (A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.)

(4) Hospital Confinement Indemnity Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(4). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE IV

(COMPANY NAME)
 HOSPITAL CONFINEMENT INDEMNITY COVERAGE
 THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS
 BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT
 INTENDED TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE

(a) Read Your (Policy)(Certificate) Carefully--This outline of coverage provides a very brief description of the important feature of coverage. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!

(b) Hospital confinement indemnity coverages designed to provide, to persons insured, coverage in the form of a fixed daily benefit during periods of hospitalization resulting from a covered accident or sickness, subject to any limitations set forth in the policy. Coverage is not provided for any benefits other than the fixed daily indemnity for hospital confinement and any additional benefit described below.

(c) (A brief specific description of the benefits in the following order:

daily benefit payable during hospital confinement; and
 duration of benefit.)

(d) (A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefit, described in Section (c).)

(e) (A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.)

(f) (Any benefits provided in addition to the daily hospital benefit.)

(5) Major Medical Expense Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of R590-126-7(5). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE V

(COMPANY NAME)
 MAJOR MEDICAL EXPENSE COVERAGE

OUTLINE OF COVERAGE

(a) Read Your Policy Carefully--This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy

provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

(b) Major medical expense coverage is designed to provide, to persons insured, comprehensive coverage for major hospital, medical, and surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services, surgical services, anesthesia services, in-hospital medical services, and out-of-hospital care, subject to any deductibles, copayment provisions, or other limitations that may be set forth in the policy. Basic hospital or basic medical insurance coverage is not provided.

(c) (A brief specific description of the benefits, including dollar amounts, contained in this policy, in the following order:

daily hospital room and board;
 miscellaneous hospital services;
 surgical services;
 anesthesia services;
 in-hospital medical services;
 out-of-hospital care;
 maximum dollar amount for covered charges; and
 other benefits, if any.)

(d) (A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in Subsection (c).)

(e) (A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.)

(6) Basic Medical Expense Coverage.
 An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of R590-126-7(6). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE VI
 (COMPANY NAME)
 BASIC MEDICAL EXPENSE COVERAGE

OUTLINE OF COVERAGE

(a) Read Your Policy Carefully--This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

(b) Basic medical expense coverage is designed to provide, to persons insured, limited coverage for major hospital, medical, and surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services, surgical services, anesthesia services, in-hospital medical services, and out-of-hospital care, subject to any deductibles, copayment provisions, or other limitations that may be set forth in the policy. Basic hospital or basic medical insurance coverage is not provided.

(c) (A brief specific description of the benefits, including dollar amounts, contained in this policy, in the following order:

daily hospital room and board;
 miscellaneous hospital services;
 surgical services;
 anesthesia services;
 in-hospital medical services;
 out-of-hospital care;

maximum dollar amount for covered charges; and other benefits, if any.)

(d) (A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in Subsection (c).)

(e) (A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.)

(7) Disability Income Protection Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(7). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE VII (COMPANY NAME) DISABILITY INCOME PROTECTION COVERAGE

OUTLINE OF COVERAGE

(a) Read Your Policy Carefully--This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

(b) Disability income protection coverage is designed to provide, to persons insured, coverage for disabilities resulting from a covered accident or sickness, subject to any limitations set forth in the policy. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.

(c) (A brief specific description of the benefits contained in this policy.)

(d) (A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefits described in Subsection (c).)

(e) (A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.)

(8) Accident-Only Coverage.

An outline of coverage in the form prescribed below shall be issued in connection with policies meeting the standards of Subsection R590-126-7(8). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE VIII (COMPANY NAME) ACCIDENT-ONLY COVERAGE THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS BENEFITS PROVIDED ARE SUPPLEMENTAL AND NOT INTENDED TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE

(a) Read Your (Policy)(Certificate) Carefully--This outline of coverage provides a very brief description of the important features of the coverage. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY)(CERTIFICATE) CAREFULLY!

(b) Accident-only coverage is designed to provide, to persons insured, coverage for certain losses resulting from a covered accident ONLY, subject to any limitations contained in the policy. Coverage is

not provided for basic hospital, basic medical-surgical, or major medical expenses.

(c) (A brief specific description of the benefits.)

(d) (A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in Subsection (c).)

(e) (A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.)

(9) Specified Accident Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies or certificates meeting the standards of R590-126-7(9). The coverage shall be identified by the appropriate bracketed title. The items included in the outline of coverage must appear in the sequence prescribed:

TABLE IX (COMPANY NAME) SPECIFIED ACCIDENT COVERAGE THIS (POLICY) (CERTIFICATE) PROVIDES LIMITED BENEFITS BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE

(a) Read Your (policy) (certificate)(Outline of Coverage) Carefully--This outline of coverage provides a very brief description of the important features of coverage. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!

(b) Specified accident coverages designed to provide, to persons insured, restricted coverage paying benefits ONLY when certain losses occur as a result of specified accidents. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.

(c) (A brief specific description of the benefits, including dollar amounts.)

(10) Specified Disease Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies or certificates meeting the standards of Subsection R590-126-7(10). The coverage shall be identified by the appropriate bracketed title. The items included in the outline of coverage must appear in the sequence prescribed:

TABLE X (COMPANY NAME) SPECIFIED DISEASE COVERAGE THIS (POLICY) (CERTIFICATE) PROVIDES LIMITED BENEFITS BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE

(a) Specified disease coverage is designed only as a supplement to a comprehensive health insurance policy and should not be purchased unless you have this underlying coverage. Persons covered under Medicaid should not purchase it. Read the Buyer's Guide to Specified Disease Insurance to review the possible limits on benefits in this type of coverage.

(b) Read Your (policy) (certificate)(Outline of Coverage) Carefully--This outline of coverage provides a very brief description of the important features of coverage. This is not the insurance contract

and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!

(c) Specified disease coverages designed to provide, to persons insured, restricted coverage paying benefits ONLY when certain losses occur as a result of specified diseases. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.

(d) (A brief specific description of the benefits, including dollar amounts.)

(11) Catastrophic Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(11). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE XI

(COMPANY NAME)
CATASTROPHIC COVERAGE
OUTLINE OF COVERAGE

(a) Read Your Policy Carefully--This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

(b) Catastrophic coverage is designed to provide benefits for medical expenses incurred by the insured. Coverage is provided for daily hospital room and board, miscellaneous hospital services, surgical services, anesthesia services, in-hospital medical services, and out-of-hospital care, subject to any deductibles with no separate internal dollar limits.

(c) (A brief specific description of the benefits, including dollar amounts, contained in this policy, in the following order:

- daily hospital room and board;
- miscellaneous hospital services;
- surgical services;
- anesthesia services;
- in-hospital medical services;
- out-of-hospital care; and
- other benefits, if any.)

(d) (A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in subsection (c).)

(e) (A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.)

(12) Limited Benefit Health Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies or certificates which do not meet the minimum standards of Subsections (1), (2), (3), (4), (5), (6), (8), (9), (10) and (11). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE XII

(COMPANY NAME)
LIMITED BENEFIT HEALTH COVERAGE
BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED
TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE

(a) Read Your (Policy)(Certificate) Carefully--This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!

(b) Limited benefit health coverage is designed to provide, to persons insured, limited or supplemental coverage.

(c) (A brief specific description of the benefits, including amounts.)

(d) (A description of any provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in Subsection (c).)

(e) (A description of provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.)

(13) Dental Plans.

An outline of coverage, in the form prescribed below, shall be issued in connection with dental plan policies and certificates. The items included in the outline of coverage must appear in the sequence prescribed:

TABLE XIII

(COMPANY NAME)
LIMITED BENEFIT HEALTH COVERAGE
BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED
TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE

(a) Read Your (Policy)(Certificate) Carefully--This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY)(CERTIFICATE) CAREFULLY!

(b) (A brief specific description of the benefits.)

(c) (A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in Subsection (b).)

(d) (A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.)

(14) Vision Plans.

An outline of coverage in the form prescribed below shall be issued in connection with vision plan policies and certificates. The items included in the outline of coverage must appear in the sequence prescribed:

TABLE XIV

(COMPANY NAME)
LIMITED BENEFIT HEALTH COVERAGE
BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED
TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE

(a) Read Your (Policy)(Certificate) Carefully--This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!

(b) (A brief specific description of the benefits.)

(c) (A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefits described in Subsection (1)(b).)

(d) (A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.)

(15) An insurer shall deliver an outline of coverage to an applicant or enrollee in the sale of an accident and health insurance as required in this rule.

(16) If an outline of coverage was delivered at the time of application or enrollment and the policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate must accompany the policy or certificate when it is delivered and contain the following statement in no less than 12 point type, immediately above the company name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application, and the coverage originally applied for has not been issued."

(17) Outlines of coverage for hospital confinement indemnity, specified disease, or limited benefit policies which are to be delivered to persons eligible for Medicare by reason of age shall contain the following language, which shall be printed on or attached to the first page of the outline of coverage:

This IS NOT A MEDICARE SUPPLEMENT policy. If you are eligible for Medicare, review the Guide to Health Insurance for People With Medicare available from the company.

(18) In any case where the prescribed outline of coverage is inappropriate for the coverage provided by the policy or certificate, an alternate outline of coverage shall be submitted to the commissioner for prior approval.

(19) Advertisements may fulfill the requirements for outlines of coverage if they satisfy the standards specified for outlines of coverage in this rule.

R590-126-10. Requirements for Replacement of Accident and Health Insurance.

(1) An application form shall include a question designed to elicit information as to whether the insurance to be issued is intended to replace any other accident and health insurance presently in force. A supplementary application or other form to be signed by the applicant containing the question may be used.

(2) Upon determining that a sale will involve replacement, an insurer, other than a direct response insurer, or its agent, shall furnish the applicant, prior to issuance or delivery of the policy, the notice described in Subsection (3). The insurer shall retain a copy of the

notice. A direct response insurer shall deliver to the applicant, upon issuance of the policy, the notice described in Subsection (4). In no event, however, will the notices be required in the solicitation of the following types of policies: accident-only and single-premium nonrenewable policies.

(3) The notice required by Subsection (2) for an insurer, other than a direct response insurer, shall provide, in substantially the following form:

TABLE XV

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF ACCIDENT AND HEALTH INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and health insurance and replace it with a policy to be issued by (insert company name) Insurance Company. For your own information and protection, you should be aware of and seriously consider certain factors that may affect the insurance protection available to you under the new policy.

Health conditions which you may presently have, (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits present under the new policy, whereas a similar claim might have been payable under your present policy.

You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.

If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concern your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

The above "Notice to Applicant" was delivered to me on:

.....
(Date)

.....
(Applicant's Signature)

(4) The notice required by Subsection (2) for a direct response insurer shall be as follows:

TABLE XVI

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF ACCIDENT AND HEALTH INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and health insurance and replace it with the policy delivered herewith issued by (insert company name) Insurance Company. Your new policy provides 30 days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors that may affect the insurance protection available to you under the new policy.

Health conditions that you may presently have, (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.

(To be included only if the application is attached to the policy). If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (insert company name and address) within ten days if any information is not correct and complete, or if any past medical history has been left out of the application.

(COMPANY NAME)

R590-126-11. Separability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

R590-126-12. Existing Contracts.

Contracts issued prior to the effective date of this rule must be amended to comply with the revised provisions.

R590-126-13. Enforcement Date.

The commissioner will begin enforcing the revised provision of this rule 45 days from the rule's effective date.

KEY: health insurance

2003

Notice of Continuation February 1, 2002

31A-2-201

31A-2-202

31A-22-605

31A-22-623

31A-22-626

31A-23-302

31A-26-301

31A-21-201

31A-22-605

31A-22-623

31A-22-626

31A-23-302

31A-26-301

▼ ————— ▼

Labor Commission, Safety
R616-3-3
Safety Codes for Elevators

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26109

FILED: 03/14/2003, 14:04

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this proposed rule change is to incorporate by reference recent amendments to Section 1109.7 of the International Building Code.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment maintains consistency between Labor Commission rules and the International Building Code by adopting recent amendments to the Code. Specifically, what was formerly Section 1108.7 of the International Building Code has been renumbered as Section 1109.7. Additionally, the new Section 1109.7 of the International Building Code has been amended to provide exceptions to the rule providing that lifts may be used as an accessible route in new construction.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-1-101 et seq.

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: International Building Code, 2001 Supplement, Section 1109.7, effective date January 1, 2003

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The Labor Commission's Safety Division has obtained the updated International Building Code at no cost. As to the impact on State building projects, the state may experience a small reduction in cost because the amendment permits less expensive methods for accessible routes on new construction.

❖LOCAL GOVERNMENTS: As to the impact on local government building projects, local governments may experience a small reduction in cost because the amendment permits less expensive methods for accessible routes on new construction.

❖OTHER PERSONS: As to the impact on other persons' building projects, other persons may experience a small reduction in cost because the amendment permits less expensive methods for accessible routes on new construction.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In light of the less expensive compliance requirements established by the proposed amendment, affected persons should experience slightly reduced compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendment incorporates a change to the International Building Code that provides a more economical means of accessible routes on new construction. By reducing compliance costs, the proposed amendment should have a somewhat favorable fiscal impact on businesses.

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

LABOR COMMISSION
SAFETY
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:

Pete Hackford at the above address, by phone at 801-530-7605, by FAX at 801-530-6390, or by Internet E-mail at phackford@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 05/01/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/02/2003

AUTHORIZED BY: R Lee Ellertson, Commissioner

R616. Labor Commission, Safety.

R616-3. Elevator Rules.

R616-3-3. Safety Codes for Elevators.

The following safety codes are adopted and incorporated by reference within this rule:

A. ASME A17.1, Safety Code for Elevators and Escalators, 2000 ed., with 2002 Addenda issued May 4, 2002, and amended as follows:

1. Delete 2.2.2.5;

2. Amend 8.6.5.8 as follows: Existing hydraulic cylinders installed below ground when found to be leaking shall be replaced with cylinders conforming to 3.18.3.4 or the car shall be provided with safeties conforming to 3.17.1 and guide rails, guide rail supports and fastenings conforming to 3.23.1. This code is issued every three years with annual addenda. New issues and addenda become mandatory only when a formal change is made to these rules. Elevators are required to comply with the A17.1 code in effect at the time of installation.

B. ASME A17.3 - 2002 Safety Code for Existing Elevators and Escalators. This code is adopted for regulatory guidance only for elevators classified as remodeled elevators by the Division of Safety.

C. ASME A90.1-1992, Safety Standard for Belt Manlifts.

D. ANSI A10.4-1990, Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations.

E. 2000 International Building Code and the 2001 supplement section 1109.7, effective date January 1, 2003.

F. ICC/ANSI A117.1-1998 Accessible and Usable Buildings and Facilities, sections 407 and 408, approved February 13, 1998.

G. ASME A18.1-1999 Safety Standard For Platform Lifts And Stairway Chairlifts, issued July 26, 1999, with A18.1a 2001 addenda issued March 26, 2001.

KEY: elevators, certification, safety

~~November 15, 2002~~ 2003

Notice of Continuation January 10, 2002

34A-1-101 et seq.



Public Service Commission,
Administration
R746-348-7
Essential Facilities and Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26112

FILED: 03/14/2003, 15:29

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To add conduit, ducts, innerducts, dark fiber and right of way, under certain circumstances, to defined essential facilities. To eliminate operator services and directory assistance from the definition of essential services.

SUMMARY OF THE RULE OR CHANGE: The change would add conduit, ducts, innerducts, rights of way, dark fiber to intra-premises cabling and inside wiring owned or controlled by a telecommunications corporation as essential facilities in specified circumstances. These would be where they are necessary to provide service, cannot be reasonably duplicated and for which there is no adequate alternative in terms of quality, quantity and price.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 54-8b-2.3, 54-8b-2

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There is no anticipated cost or savings to the State budget as the rule amendment simply adds the items outlined in the summary above to the list of essential facilities. This places no additional burden on Commission staff.

❖ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to the local government, because the Commission does not regulate local government telecommunications.

❖ **OTHER PERSONS:** Telecommunications corporations which own or control the facilities that will fall within the proposed change may incur costs in making the facilities available to other telecommunications corporations. Compensation for the use of these facilities will be set by the Commission as required by law. Compliance costs will be reimbursed pursuant to statutory mandate.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Telecommunications corporations which own or control the facilities that will fall within the proposed change may incur costs in making the facilities available to other telecommunications corporations. Compensation for the use of these facilities will be set by the Commission as required by law. Compliance costs will be reimbursed pursuant to statutory mandate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Our growing experience with telecommunications corporations and the telecommunications market in Utah has led us to recognize that a Qwest Corporation petition to modify the definition of essential facilities likely has merit. When essential facilities of one corporation are to be made available to another corporation, Utah law requires that access be equal in terms and conditions, including price. Telecommunications corporations will be compensated for the access granted to these additional facilities and Utah businesses, as consumers of public telecommunications services, may see a decrease in costs as additional telecommunications corporations may compete to provide services through the facilities made available. The Commission had previously determined that alternative sources for operator services and directory assistance are

available, they no longer likely qualify as essential services under Utah's statutory criteria. With multiple sources for these services, market forces will determine whether there is any change in their prices and resulting fiscal impact that may occur 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 04/30/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/01/2003

AUTHORIZED BY: Barbara Stroud, Paralegal

R746. Public Service Commission, Administration.

R746-348. Interconnection.

R746-348-7. Essential Facilities and Services.

A. Designation -- At a minimum, the following are considered to be essential facilities or services pursuant to 54-8b-2. 2.:

1. Unbundled local loops including 2-wire, 4-wire and digital subscriber line facilities;
2. Loop concentration, loop distribution and loop feeder facilities;
3. Network interface devices;
4. Switching capability including line-side facilities, trunk-side facilities and tandem facilities;
5. 911 and E911 emergency call networks;
6. Access to numbering resources;
7. Local telephone number portability;
8. Inter-office transmission facilities;
9. Signaling networks and call-related databases including signaling links, signaling transfer points and databases used for billing and collection, and transmission and routing of public telecommunications services;
10. Operations support systems used to pre-order, order, provision, maintain and repair unbundled network elements, or services purchased for resale from an incumbent local exchange carrier by another telecommunications corporation;
11. Billing functions;
12. ~~[Operator services and directory assistance;~~
13. ~~Physical and virtual collocation and,~~
14. Conduit, ducts, innerducts, dark fiber, right of way,
15. intra-premises cabling and inside wiring owned or controlled by a ~~an incumbent~~ local exchange carrier that is necessary for a telecommunications corporation to provide a public

telecommunications service, that cannot be reasonably duplicated and for which there is no adequate economic alternative in terms of quality, quantity and price.

B. Determination of Essential Nature -- A telecommunications corporation may request any essential network facility or service from another telecommunications corporation and that telecommunications corporation shall timely provide the network facility or service in accordance R746-348-4 unless it demonstrates that providing that facility or service is technically infeasible.

1. A person may petition the Commission for a finding that a facility or service is essential or should no longer be deemed essential.

KEY: interconnection[~~z~~], network interconnection[~~z~~], telecommunications, telephone utility regulation

[~~October 7, 1997~~2003

Notice of Continuation January 30, 2002

54-4-1

54-4-8

54-4-12

54-8b-2



Regents (Board Of), Administration

R765-685

Utah Educational Savings Plan Trust

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26085

FILED: 03/11/2003, 10:40

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A rule amendment is needed for the Utah Educational Savings Plan Trust (UESP) to eliminate the requirement that contributions of at least \$300 be made annually.

SUMMARY OF THE RULE OR CHANGE: Remove the requirement that total annual payments must equal at least \$300 and simplify the payment section to only require that any type of payment be at least \$25, regardless of the frequency.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 53B, Chapter 8a

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: This rule change does not affect any state budget. It only applies to minimum annual contributions individuals may be required to make to college savings plans the individual owns.

❖LOCAL GOVERNMENTS: This rule does not impose any cost nor savings to any local government. The rule change reduces required annual contributions individuals may be required to make to college savings plans the individual owns.

❖OTHER PERSONS: There are no costs associated with this rule change for any other person since it reduces the annual contribution amount individuals may be required to make to college savings plans the individual owns.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any affected persons. This rule change reduces the annual required contribution level individuals can make to college savings plans administered by the Utah Educational Savings Plan Trust and owned by the individual.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no impact on businesses. The rule change will allow individuals to more easily contribute to a college savings plan for dependents and others without the requirement of a larger annual contribution amount.

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

REGENTS (BOARD OF)
ADMINISTRATION
BOARD OF REGENTS BUILDING, THE GATEWAY
60 SOUTH 400 WEST
SALT LAKE CITY UT 84101-1284, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ronell Crossley at the above address, by phone at 801-321-7291, by FAX at 801-321-7299, or by Internet E-mail at rcrossley@utahsbr.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/02/2003

AUTHORIZED BY: Chalmers Gail Norris, Associate Commissioner for Student Financial Aid

R765. Regents (Board of), Administration.

R765-685. Utah Educational Savings Plan Trust.

R765-685-1. Purpose.

To provide rules for the administration and operation of the Utah Educational Savings Plan Trust established by Title 53B, Chapter 8a, of the Utah Code Annotated 1953.

R765-685-2. References.

- 2.1. Title 53B, Chapter 8a, Utah Code Annotated 1953
- 2.2. Title 67, Chapter 16, Utah Code Annotated 1953
- 2.3. Utah Administrative Code, R614-2. Investment of Funds of Member Institutions of the State System of Higher Education.

R765-685-3. Definitions.

Many terms used in this rule are defined in Section 53B-8a-102. In addition, the following terms are defined by this rule.

- 3.1. The term "academic period" shall mean one semester or one quarter or an equivalent period for a vocational technical institution.
- 3.2. The word "account" shall denote the account in the program fund established and maintained under the trust for a beneficiary.
- 3.3. The term "account balance" shall mean the fair market value of an account as of the accounting date.

3.4. The term "accounting date" shall mean the date, not later than the last business day of each quarter as determined by the program administrator.

3.5. The term "administrative fee or charge" shall mean a fee charged by the trust authorized by 53B-8a-103(k), consisting of the following: (i) an enrollment fee of up to \$75 for initial enrollment in the trust charged to participants selecting investment options 2, 3, or 4 (but not charged to participants selecting option 1), which may be waived if the participant selects direct deposit or annual payment of contributions; (ii) an annual account maintenance fee payable to the administrative fund, deducted from the account assets held under the participation agreements of participants selecting investment options 2, 3, or 4 (but not deducted from the account assets of participants selecting option 1), not to exceed \$50 annually; (iii) a daily charge deducted from the assets of participants selecting investment options 2, 3, or 4 in the program fund at a rate equivalent to an annual effective rate of not more than 0.50%, no more than 0.25% of which shall be payable to the administrative fund, and no more than 0.25% of which shall be payable to the investment advisor for the trust; or (iv) the fee charged by the trust on cancellation specified in Section 8.2.2. and required by federal law.

3.6. The term "dependent person" shall mean a person who is unable to meet all of the criteria listed in subsection 3.8 of this rule.

3.7. The term "domicile" shall mean a person's true, fixed and permanent home. It is the place where the person intends to remain, and to which the person expects to return without intending to establish a new domicile elsewhere.

3.8. The term "independent person" shall mean a person who meets all of the following criteria. An independent person is one:

3.8.1. whose parent has not claimed such person as a dependent on federal or state income tax returns for the tax year preceding the date of a request to establish a vested participation agreement;

3.8.2. who demonstrates no financial dependence upon parent(s); and

3.8.3. whose parents' income is not taken into account by any private or governmental agency furnishing educational financial assistance to the person, including scholarships, loans, and other assistance.

3.9. "Investment options" shall mean the four investment options available for selection by a participant at the time of enrollment. Investment risk under the four options ranges from conservative to most aggressive. There are no guarantees regarding moneys invested under any option, either as to earnings or as to return of principal. The value of each participant account depends on the performance of the investments selected by the trust. Each participant assumes the investment risks associated with the investment option selected. Once an investment option is selected, a participant may not change to another investment option unless authorized by the Internal Revenue Service or Treasury as being in compliance with Section 529 of the Internal Revenue Code. Under Option 1, the most conservative, all contributions are invested in the pooled Public Treasurer's Investment Fund (safe and short-term). Under Options 2 and 3, the account portfolio mix will be automatically adjusted according to a beneficiary's age. When the child is ten or more years away from college age, the portfolio is heavily invested in equity mutual funds for growth of capital. As a child nears college age, the portfolio gradually shifts emphasis to bond and short-term funds to potentially preserve capital that will be readily available for college expenses. Under Option 4, the most aggressive, the account portfolio will be totally invested in equity mutual funds (stocks) for potential equity growth.

3.10. "Notice to Delay Trust Benefits" shall mean the form which a participant submits to the program administrator of the trust to delay benefits under a participation agreement.

3.11. "Notice to Adjust Payments" shall mean the form which a participant submits to the program administrator of the trust to change the payment amount or payment schedule of the participation agreement.

3.12. "Request to Substitute Beneficiary" shall mean the form which a participant submits to the program administrator of the trust to request the substitution of a beneficiary.

3.13. "Notice to Terminate Agreement" shall mean the form which a participant submits to the program administrator of the trust to terminate a participation agreement under the trust.

3.14. "Notice to Use Trust Benefits" shall mean the form which a participant submits to the program administrator of the trust to notify the trust of the date benefits are to begin and level of benefits to be paid.

3.15. The term "parent" shall mean one of the following:

3.15.1. A person's father or mother; or

3.15.2. A court-appointed legal guardian. The term "parent" shall not apply if the guardianship has been established primarily for the purpose of conferring the status of resident on a person.

3.16. The word "payments" shall denote the money paid by the participant to the trust under the participation agreement.

3.17. The term "public treasurer" shall mean the Assistant Commissioner for Student Loan Finance who has the responsibility for the safekeeping and investment of all trust funds.

3.18. The term "qualified proprietary school approved by the board" shall mean a proprietary school which is fully accredited by a regional accrediting association or commission, the Accrediting Commission for Career Schools and Colleges of Technology, or the Accrediting Council for Independent Colleges and Schools, for which the student loan cohort default rate most recently published by the U.S. Department of Education is less than 20 percent, and which has not been placed on a reimbursement basis for financial aid programs by the U.S. Department of Education or under any limitation, suspension, or termination action or letter of credit requirement from the U.S. Department of Education or a guaranty agency under the Federal Family Education Loan Program.

R765-685-4. Participant Eligibility.

Purpose - Section 53B-8a-106 provides that the trust may enter into participation agreements with participants to effectuate the purposes, objectives and provisions of the trust. This rule establishes the eligibility criteria for a participant.

4.1. Participant Eligibility - A participant may be a resident of any state.

4.2. Participation Agreement - A participant shall execute a participation agreement with the program administrator that specifies the terms and conditions under which the participant shall participate in the trust.

4.3. Valid Social Security Number - A participant shall, on signing a participation agreement, provide the program administrator with his or her valid social security number.

R765-685-5. Beneficiary Eligibility.

Purpose - Section 53B-8a-106 provides that a beneficiary of a participation agreement must be designated from date of birth through age 18 for the participant to receive Utah income tax benefits. This rule establishes the eligibility criteria for a beneficiary.

5.1. Beneficiary Eligibility - A beneficiary may be a resident of any state and may be any age. However, for a participant to subtract allowable investments from federal taxable income on a Utah income tax return, on the day the participation agreement is executed, the beneficiary must be younger than 19 years of age.

5.2. Proof of Age - A participant shall, on signing a participation agreement, provide the program administrator with proof of the beneficiary's age, in the form of a birth certificate or such other form as the program administrator may require.

5.3. Valid Social Security Number - A participant shall, on signing a participation agreement, provide the program administrator a valid social security number of the beneficiary.

R765-685-6. Payments and Payment Schedules.

Purpose - Section 53B-8a-106 states that participant agreements shall require participants to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary, not to exceed an amount determined by the board and not to exceed total estimated higher education costs as determined by the board. This rule provides for implementation of this provision.

6.1. Payment Schedule - A participant must specify a schedule for making payments according to a participation agreement. Acceptable payment schedules are, 1) weekly, 2) bi-weekly, 3) monthly, 4) annually, and 5) other.

6.2. Payment - A participant must specify a payment amount to be paid according to the payment schedule chosen by the participant. ~~[For participants who select a weekly, bi-weekly or monthly payment schedule, the specified payment amount must be at least twenty-five dollars. For participants who select an annual payment schedule, the specified payment amount must be at least three hundred dollars. For participants who select other payment schedule, the specified payment amount must equate to at least three hundred dollars per year. A payment of less than twenty-five dollars shall be returned to the participant.]~~

6.3. Maximum Payments - The total of all payments made on behalf of a beneficiary into this trust and the supplemental trust enacted in Section 53B-8b may not exceed the cost of qualified higher education expenses for four years of undergraduate plus three years of graduate enrollment at the highest cost public or private institution authorized under the plan. Payments in excess of this maximum shall be returned to the participant. The maximum amount of investments that may be subtracted from federal taxable income under Subsection 59-10-114(2)(j) shall be \$1,200 for each individual beneficiary for the 1996 calendar year and an amount adjusted annually thereafter to reflect increases in the Consumer Price Index.

6.4. Annual Adjustments - Annual adjustments to the maximum amount of payments allowable under a participation agreement in a given calendar year shall be published by the Trust program administrator prior to the beginning of that year.

6.5. Amendments - Payment amounts and payment schedules may be adjusted by submitting to the program administrator notice to adjust payments. No administrative fee may be charged to participants for such adjustments.

R765-685-7. Substitution of Beneficiary.

Purpose - Section 53B-8a-106 provides that beneficiaries may be changed subject to the rules and regulations of the board. This rule establishes the criteria for substituting one beneficiary for another.

7.1. Substitution - A participant may substitute a beneficiary at any time prior to the date of admission of any beneficiary of a participation agreement to an institution of higher education and may

transfer funds to another beneficiary account at any time. The substitute beneficiary must be eligible for participation pursuant to section 5 of this rule, and be a member of the family of the beneficiary being substituted as defined in subsection 7.1.1 of this rule.

7.1.1. Member of Family - An individual shall be considered a member of a beneficiary's family only if such individual is:

7.1.1.1. an ancestor of such beneficiary

7.1.1.2. a spouse of such beneficiary

7.1.1.3. a lineal descendant of such beneficiary, of such beneficiary's spouse, or of a parent or grandparent of such beneficiary, or

7.1.1.4. the spouse of any lineal descendant described in subsection 7.1.1.3.

7.1.1.5. For purposes of the preceding sentence, a legal adoption shall be considered as though it establishes a blood relationship between an adopted child and parent.

7.2. Request - A participant may request that a beneficiary be substituted by submitting to the program administrator a request to substitute beneficiary. The request shall accompany evidence, as specified by the program administrator, that the proposed substitute beneficiary is a member of the family of the beneficiary.

R765-685-8. Cancellation and Payment of Refunds.

Purpose - Section 53B-8a-108 provides that any participant may cancel a participation agreement at will. This rule establishes the criteria for canceling participation agreements and providing refunds.

8.1. Cancellation - A participant may at any time cancel a participation agreement, without cause, by submitting to the program administrator notice to terminate agreement.

8.2. Payment of Refund - If the participation agreement is canceled, the participant is entitled to a refund. The refund shall be mailed or otherwise sent to the participant within sixty days after receipt by the program administrator of notice to terminate the participation agreement. The amount of the refund shall be the total of all contributions made plus actual investment income on the contributions, up to the current account balance as adjusted for any market change.

8.3. Death or Disability of the Beneficiary, Receipt of a Scholarship, or Rollover Distribution - The participant is entitled to a refund of one-hundred percent of all payments made under the participation agreement plus all investment income which has been credited to the participant's account less any amount paid by the trust for educational expenses of the beneficiary upon the occurrence of, 1) death of the beneficiary, 2) permanent disability or mental incapacity of the beneficiary, 3) receipt of a scholarship (or allowance or payment described in section 135(d)(1)(B) or (C) of the Internal Revenue Code) by the designated beneficiary to the extent the amount of the distribution does not exceed the amount of the scholarship, allowance, or payment, or 4) a rollover distribution to another program or account qualifying under Section 529 of the Internal Revenue Code. Under such circumstances, no administrative fee shall be charged.

8.3.1. Before a cancellation and refund due to the death of a beneficiary is made, a participant must provide the trust a copy of the beneficiary's death certificate or other proof of death acceptable under state law.

8.3.2. Before a cancellation and refund due to the disability or mental incapacity of a beneficiary is made, a participant must provide to the trust written certification from a qualified and licensed physician that the beneficiary cannot reasonably attend school.

8.3.3. Before a cancellation and refund due to the receipt of a scholarship, allowance or payment, a participant must provide to the

trust written proof of the receipt by the beneficiary of a scholarship, allowance or payment and the amount thereof.

8.4. Refunds Reported - Funds that are refunded to a participant pursuant to this section shall be reported to the appropriate taxing authorities for the tax year in which such refund is made.

R765-685-9. Vested Participation Agreement.

Purpose - Section 53B-8a-106 provides that the beneficiary of a vested participation agreement shall be considered a Utah resident for tuition purposes. This rule establishes the criteria for determining whether a participation agreement has vested.

9.1. Residency Requirement - An individual who has at any time been a resident of the State of Utah for at least eight continuous years and was designated as a beneficiary under a participation agreement for that entire eight year period, shall be deemed to have a vested participation agreement, even if the beneficiary leaves the state prior to enrollment in an institution of higher education.

9.2. Proof of Residency - At any time following the expiration of the period of eight years of continuous residency by the beneficiary, either the participant or the beneficiary may submit to the program administrator evidence of the residency for the purpose of establishing the vested participation agreement.

9.2.1. Evidence submitted on behalf of a dependent person shall pertain to the domicile of either parent during the claimed period of residency. Evidence submitted on behalf of an independent person shall pertain to the domicile of such person during the claimed period of residency.

9.2.2. The determination of residency shall be based upon verifiable circumstances or actions. No single fact is paramount, and each situation shall be evaluated to identify those facts which are essential to the determination of domicile.

9.2.3. The following facts, although not conclusive shall have probative value in support of a claim for resident classification.

9.2.3.1. Full-time employment in Utah or transfer to an employer in contiguous area while maintaining domicile in Utah.

9.2.3.2. Filing of Utah resident income tax return for each applicable calendar year of claimed residency status.

9.2.3.3. Attendance as a full-time, nonresident student at an out-of-state institution of higher education while determined to be a resident of Utah.

9.2.3.4. Abandonment of a former domicile and establishing domicile in Utah with attendance at an institution of higher education following and only incidental to such change in domicile.

9.2.3.5. Payment of occupational taxes in Utah.

9.2.3.6. Payment of real property taxes in Utah.

9.2.3.7. Payment of intangible personal property taxes in Utah.

9.2.3.8. Ownership of real property in Utah, if the property was used as a residence during the claimed period of residency.

9.2.3.9. Long-term lease of housing during the claimed period of residency.

9.2.3.10. Utah automobile registration during the claimed period of residency.

9.2.3.11. Utah driver's license during the claimed period of residency.

9.2.3.12. Registration as a Utah voter during the claimed period of residency.

9.2.3.13. Corroborating affidavit of a non relative.

9.2.4. The determination of residency shall be based upon verifiable circumstances or actions and authenticated copies of relevant documentation. The program administrator may request additional

documentation to clarify circumstances and formulate a decision that considers all relevant facts.

9.3. Non transferability - Although the participant may freely substitute beneficiaries under a participation agreement, the residency status acquired by a beneficiary of a vested participation agreement shall not be used to confer such status on a substitute beneficiary, nor shall the residency of one beneficiary be taken into account in the establishment of a vestment period of substitute beneficiary.

R765-685-10. Payment of Benefits.

Purpose - Section 53B-8a-106 provides that payment of benefits provided under participation agreements must begin not later than the first full academic quarter or semester at an institution of higher education following the beneficiary's 22nd birthday or high school graduation, whichever is later, unless the participant notifies the program administrator to the contrary. This rule establishes the procedures for the payment of benefits.

10.1. Distribution of Benefits - For payment of benefits from the trust to begin, the participant shall submit a notice to use trust benefits.

10.2. Delay of Distribution - For payment of benefits to be delayed beyond four months after the beneficiary's 22nd birthday, the participant must submit a notice to delay trust benefits unless the beneficiary was over the age of 18 when the account was established. If no such notice is submitted, the program administrator shall refund money held by the trust on behalf of the participant according to section 8 of this rule.

10.3. Limit on Delay of Distribution - Participants may delay the distribution of trust benefits until the beneficiary's 27th birthday or for ten years from the date the account was established if the beneficiary was over the age of 18 at the date of establishment. If the participant does not submit a notice to use trust benefits on or before beneficiary's 27th birthday or ten years from the date of account establishment and the participant does not elect to roll the funds into another family member account or to substitute a beneficiary, the program administrator shall refund money held by the trust on behalf of the participant according to section 8 of this rule.

10.3.1. The program administrator may waive the age or time limit identified in subsection 10.3 of this rule if, in the judgement of the program administrator, the probability that the beneficiary will attend a higher education institution in the near future is significant.

10.4. Payout Schedule - Upon submission of a notice to use trust benefits, the participant shall specify the level of benefits to be paid. The participant may elect distribution of an allotment of the account balance, calculated by dividing the account balance by the number of academic periods in the beneficiary's program of study, or a higher amount, which shall not exceed the beneficiary's higher education costs for each academic period. The participant may adjust the level of benefits paid in any academic period by notifying the program administrator in writing.

10.5. Duration of Payout - Distribution of benefits shall begin after receipt by the program administrator of notice to use trust benefits and shall continue throughout the beneficiary's period of enrollment at an institution of higher education or until the account balance has been exhausted, whichever occurs first.

10.6. Interruption in Attendance - If following the submission of a notice to use trust benefits, the beneficiary interrupts his or her attendance at an institution of higher education, the participant shall submit a notice to delay trust benefits specifying the period for which trust benefits shall be delayed.

10.7. Unused Benefits - If the beneficiary graduates from an institution of higher education, and a balance remains in the

beneficiary's account, the program administrator shall refund the balance of the payments and the earnings from the investments in the program fund remaining in the account to the participant. The program administrator shall make the payment from the program fund within sixty days from the date of the beneficiary's graduation. The refund shall be made unless the beneficiary plans to continue at a higher education institution and the participant submits a completed notice to delay benefits or notice to use trust benefits.

10.8. Refunds Reported - Funds that are refunded to a participant pursuant to this section shall be reported to the appropriate taxing authorities for the tax year in which such refund is made.

R765-685-11. Higher Education Costs.

Purpose - Section 53B-8a-101 authorizes the establishment of the Utah Educational Savings Plan Trust to encourage individuals to save for future higher education costs. This rule established the definition of higher education costs.

11.1. Definition - The term "higher education costs" shall mean charges for tuition, fees, books, supplies and equipment required for enrollment or attendance of a designated beneficiary at an institution of higher education.

11.2. Payment of Benefits - The payment of benefits pursuant to subsection 10 of this rule may be made only for higher education costs as defined in subsection 11.1.

R765-685-12. Investment Policy.

Purpose - This rule is applicable to all investments by the Utah Educational Savings Plan Trust and to Trustees for funds covered by Trust agreements.

12.1. Investment Objectives - The primary objectives, in priority order, of investment activities shall be:

12.1.1. to provide compliance with the State Money Management Act and related Rules.

12.1.2. to provide adequate liquidity levels to meet Trust obligations.

12.1.3. to provide guidelines as to the types and maturities of investments while considering: (a) the availability of funds to cover current needs; (b) maximum yields on investments of funds, and (c) minimum exposure to risk of loss.

12.1.4. All fixed income investments will be suitable to be held to maturity; however, sale prior to maturity may be necessary and warranted in some cases. The Trust's investment portfolio will not be used for speculative purposes.

12.1.5. The public treasurer will consider and meet the following objectives when investing Trust funds:

12.1.5.1. safety of principal;

12.1.5.2. need for liquidity;

12.1.5.3. yield on investments;

12.1.5.4. recognition of the different investment objectives of Program, Endowment and Administrative Funds; and

12.1.5.5. maturity of investments, so that the maturity date of the investment does not exceed the anticipated date of the expenditure of funds.

12.2. Standards of Care - Standards of care include:

12.2.1. Prudence - Selection of investments as authorized by this policy shall be made with the exercise of that degree of judgment and care, under circumstances then prevailing, which a person of prudence, discretion, and intelligence would exercise in the management of his or her own affairs, not for speculation but for investment, considering the probable safety of capital, as well as the probable benefits to be derived

and the probable duration for which such investment may be made, and considering the investment objectives specified in this policy.

12.2.2. Ethics and Conflicts of Interest - Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Employees and investment officials shall disclose any personal financial or investment positions that could be related to the performance of the investment in accordance with Utah Code Annotated 67-16-1, Utah Public Officer's and Employees' Ethics Act.

12.2.3. Delegation of Authority - Authority to manage the investment program is granted to the Trust's public treasurer who is responsible for the operation of the investment program and who shall carry out established written procedures and internal controls for the operation of the investment program consistent with this investment policy.

12.3. Safekeeping and Custody - Standards of safekeeping and custody shall include:

12.3.1. Internal Controls - The public treasurer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the Trust are protected from loss, theft or misuse. The internal control structure shall be designed to provide reasonable assurance that these objectives are met.

12.3.1.1. Accordingly, the public treasurer shall establish a process for an annual independent review as provided by the state auditor to assure compliance with policies and procedures.

12.3.2. Custody -

12.3.2.1. The public treasurer shall have custody of all securities purchased or held and all evidence of deposits and investments of all funds. All securities shall be delivered versus payment to the public treasurer or to the treasurer's safekeeping bank.

12.3.2.2. The public treasurer may deposit any of these securities with a bank or trust company to be held in safekeeping by that custodian.

12.3.2.3. The provisions of this subsection apply to any book-entry-only security the ownership records of which are maintained with a securities depository, in the Federal Book Entry system authorized by the U.S. Department of Treasury, or in the book-entry records of the issuer, as follows:

12.3.2.3.1. the direct ownership of the security by the public treasurer shall be reflected in the book-entry records and represented by a receipt, confirmation, or statement issued to the public treasurer by the custodian of the book-entry system; or

12.3.2.3.2. the ownership of the security held by the public treasurer's custodial bank or trust company shall be reflected in the book-entry records and the public treasurer's ownership shall be represented by a receipt, confirmation, or statement issued by the custodial bank or trust company.

12.3.3. All investments shall be approved by the State Treasurer.

12.4. Authorized Investments - Investment transactions may be conducted only through qualified depositories, certified dealers, or directly with the issuers of the investment securities. The remaining term to maturity of investments may not exceed the period of availability of the funds to be invested. Deposits into the Trust's Administrative Fund and Program Fund may be invested only in the following assets that meet the Trust's investment objectives and criteria and the requirements of the State Money Management Act as amended:

12.4.1. negotiable or nonnegotiable deposits of qualified depositories;

12.4.2. qualifying repurchase agreements and reverse repurchase agreements with certified dealers, permitted depositories, or qualified depositories using collateral consisting of:

12.4.2.1. Government National Mortgage Association mortgage pools;

12.4.2.2. Federal Home Loan Mortgage Corporation mortgage pools;

12.4.2.3. Federal National Mortgage Corporation mortgage pools;

12.4.2.4. Small Business Administration loan pools;

12.4.2.5. Federal Agriculture Mortgage Corporation pools; or

12.4.2.6. other deposits or investments of public funds authorized by the State Money Management Act;

12.4.3. commercial paper that is classified as "first tier" by two nationally recognized statistical rating organizations, one of which must be Moody's Investors Service, Inc. or Standard and Poor's Corporation, which has a remaining term to maturity of 270 days or less;

12.4.4. bankers' acceptances that;

12.4.4.1. are eligible for discount at a Federal Reserve bank; and

12.4.4.2. have a remaining term to maturity of 270 days or less;

12.4.5. fixed rate negotiable deposits issued by a permitted depository that have a remaining term to maturity of 365 days or less;

12.4.6. obligations of the United States Treasury, including United States Treasury bills, United States Treasury notes, and United States Treasury bonds;

12.4.7. obligations other than mortgage pools and other mortgage derivative products issued by, or fully guaranteed as to principal and interest by, the following agencies or instrumentalities of the United States in which a market is made by a primary reporting government securities dealer:

12.4.7.1. Federal Farm Credit banks;

12.4.7.2. Federal Home Loan banks;

12.4.7.3. Federal National Mortgage Association;

12.4.7.4. Student Loan Marketing Association;

12.4.7.5. Federal Home Loan Mortgage Corporation;

12.4.7.6. Federal Agriculture Mortgage Corporation; and

12.4.7.7. Tennessee Valley Authority;

12.4.8. fixed rate corporate obligations that;

12.4.8.1. are rated "A" or higher or the equivalent of "A" or higher, by two nationally recognized statistical rating organizations one of which must be Moody's Investors Service, Inc. or Standard and Poor's Corporation;

12.4.8.2. are publicly traded; and

12.4.8.3. have a remaining term to final maturity of 365 days or less or is subject to a hard put at par value or better, within 365 days;

12.4.9. tax anticipation and general obligation bonds of the state or of any county, incorporated city or town, school district, or other political subdivision of this state, including bonds offered on a when-issued basis.

12.4.10. bonds, notes, or other evidence of indebtedness of any county, incorporated city or town, school district, or other political subdivision of the state that are payable from assessments or from revenues or earnings specifically pledged for payment of the principal and interest on these obligations.

12.4.11. State Public Treasurer's Investment Fund;

12.4.12. shares or certificates in a money market mutual fund as defined in Section 51-7-3, et.seq., of the State Money Management Act;

12.4.13. variable rate negotiable deposits that:

12.4.13.1. are issued by a qualified depositor or a permitted depository;

12.4.13.2. are repriced at least semiannually; and
 12.4.13.3. have a remaining term to final maturity not to exceed two years;

12.4.14. variable rate securities that:

12.4.14.1. are rated "A" or higher or the equivalent of "A" or higher by two nationally recognized statistical rating organizations, one of which must be Moody's Investors Service, Inc. or Standard and Poor's Corporation;

12.4.14.2. are publicly traded;

12.4.14.3. are repriced at least semiannually;

12.4.14.4. have a remaining term to final maturity not to exceed two years; or are subject to a hard put at par value or better, within 365 days; and

12.4.14.5. are not mortgages, mortgage-backed securities, mortgage derivative products, or any security making unscheduled periodic principal payments other than optional redemptions.

12.4.15. Deposits into the Trust's Endowment Fund may be invested in any of the following:

12.4.15.1. any deposit or investment authorized for the Trust's Administrative Fund or Program Fund; and

12.4.15.2. investments as described and set forth in the State Money Management Council Rule 2: Investment of Funds of Member Institutions of the State System of Higher Education. (Utah Administrative Code, R614-2.)

12.5. Reporting - The public treasurer will prepare monthly and quarterly investment reports with appropriate assertions which will be submitted to the Utah State Board of Regents Student Finance Subcommittee for review and approval. The Subcommittee will determine the format and information to be reported.

R765-685-13. Earnings in Program Fund.

Purpose - Section 53B-8a-107 provides the Trust with authority to invest, via the program fund, payments made by a participant under a participation agreement. This rule establishes the terms for the payment of interest to individual participant accounts within the program fund.

13.1. Quarterly Crediting - The trust shall credit interest earnings from the program fund to individual participant accounts on a quarterly basis.

13.2. Pro-rata Share - A pro-rata share of interest earned by the program fund during a given quarter shall be credited to each participant account at the end of the quarter. The pro-rata amount posted to each individual account shall be based on the average daily balance of the individual account compared to the average daily balance of the program fund during the quarter.

13.3. Transfers to Administrative Fund - Upon approval of the board, up to .5 percentage points of interest earned annually in the program fund may be transferred to the administrative fund for administrative purposes.

13.4. Quarterly Statement - At the close of each quarter, the Trust shall provide for each participant a statement listing the beginning balance, interest earned and closing balance of the participant's account held in the program fund.

R765-685-14. Earnings in Endowment Fund.

Purpose - Section 53B-8a-107 provides that each beneficiary for whom funds are saved under a participation agreement shall receive an interest in a portion of the investment income of the endowment fund of the Trust. This rule provides for implementation of this provision.

14.1. Transfers to Administrative Fund - Upon approval of the board, up to two percentage points of interest earned annually in the

endowment fund may be transferred to the administrative fund for administrative purposes.

14.2. Earmarking of Endowment Interest - A portion of the interest earned by the endowment fund that is not transferred to the administrative fund shall be earmarked for use by the beneficiary of each participation agreement.

14.3. Pro-rata Share - Each quarter, a pro-rata amount of endowment fund interest shall be earmarked to each participant account eligible under any restrictions imposed by a donor on contributions to the Endowment Fund. The pro-rata amount shall be based on the average daily balance of the eligible account held on behalf of a beneficiary in the program fund compared to the average daily balance of all eligible accounts in the entire program fund during the quarter, up to an amount equal to .25 percent of the amount saved on behalf of the beneficiary in such account.

14.4. The earmarking of endowment interest for use by a beneficiary shall not constitute ownership of such interest on the part of any beneficiary or participant. Upon cancellation of a participation agreement, endowment interest earmarked to an account shall revert back to the endowment fund.

14.5. Reinvestment of Endowment Interest - Endowment Interest that is not either transferred to the administrative fund or earmarked for use by a beneficiary under a program agreement shall be reinvested in the endowment fund.

14.6. Quarterly Disclosure - The quarterly statement provided to each participant by the Trust shall disclose both the quarterly and cumulative amounts of endowment interest that have been earmarked for use by a beneficiary under a participation agreement.

14.7. Payment of Benefits - When payment of benefits for the beneficiary begin under a participation agreement, interest from the endowment fund that has been earmarked for use by the beneficiary shall be made available for higher education costs, and shall be disbursed with the principal and interest held on behalf of the beneficiary in the program fund according to section 10 of this rule.

R765-685-15. No Pledging of Trust Funds as Security.

15.1. Funds held by the Utah Educational Savings Plan Trust may not be used by a participant or a beneficiary under a participation agreement as security for a loan.

KEY: higher education, educational savings trust

[August 15, 2002]2003

Notice of Continuation November 30, 2001

53B-8a



Tax Commission, Auditing

R865-91-39

**Subtraction from Federal Taxable
Income for a Handicapped Child or
Adult Pursuant to Utah Code Ann.**

Section 59-10-114

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE No.: 26078
 FILED: 03/10/2003, 12:08

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-10-114 provides for an income tax deduction for a handicapped child or handicapped adult. Section 59-10-501 provides the Tax Commission rulemaking authority to prescribe the records taxpayers must keep as evidence of the income tax for which the taxpayer is liable.

SUMMARY OF THE RULE OR CHANGE: The amendment provides that, while a taxpayer must continue to complete form TC-40D, Disabled Exemption Verification, for each handicapped child and adult for which a deduction is claimed, it is no longer necessary to attach a copy of that form to the individual income tax return.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-10-114 and 59-10-501

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--The amendment has no impact on whether the deduction may be taken - only how that deduction is evidenced.
- ❖ LOCAL GOVERNMENTS: None--Income tax deductions have no impact on local revenues.
- ❖ OTHER PERSONS: None--The amendment has no impact on whether the deduction may be taken -- only how that deduction is evidenced.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The amendment has no impact on whether the deduction may be taken; it will, however, make electronic filing easier.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no fiscal impacts on businesses as a result of this amendment. More taxpayers will be able to file electronic returns since the form will not have to be sent in with the return.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/02/2003

AUTHORIZED BY: Pam Hendrickson, Commissioner

R865. Tax Commission, Auditing.**R865-91. Income Tax.****R865-91-39. Subtraction from Federal Taxable Income for a Handicapped Child or Adult Pursuant to Utah Code Ann. [Section]Sections 59-10-114 and 59-10-501.**

A. ~~[The subtraction]~~ A taxpayer that claims the deduction from income for handicapped children and handicapped adults allowed under Section 59-10-114 ~~[must be accompanied, for each year claimed, by]~~ shall complete form TC-40D, [the]Disabled Exemption Verification, [form TC-40D]as evidence that the taxpayer qualifies for the deduction.

B. The form described under A. shall be:

1. completed for each year for which the taxpayer claims the deduction; and
2. retained by the taxpayer.

KEY: historic preservation, income tax, tax returns, enterprise zones

~~[December 9, 2002]~~ 2003

Notice of Continuation April 22, 2002

59-10-114

59-10-501



End of the Notices of Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (*Utah Code* Subsection 63-46a-7(1) (2001)).

As with a PROPOSED RULE, a 120-DAY RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the 120-DAY RULE including the name of a contact person, justification for filing a 120-DAY RULE, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (· · · · ·) indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A 120-DAY RULE is effective for 120 days or until it is superseded by a permanent rule.

Because 120-DAY RULES are effective immediately, the law does not require a public comment period. However, when an agency files a 120-DAY RULE, it usually files a PROPOSED RULE at the same time, to make the requirements permanent. Comment may be made on the proposed rule. Emergency or 120-DAY RULES are governed by *Utah Code* Section 63-46a-7 (2001); and *Utah Administrative Code* Section R15-4-8.

Public Safety, Peace Officer Standards and Training **R728-409**

Refusal, Suspension, or Revocation of Peace Officer Certification

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE No.: 26072
FILED: 03/07/2003, 14:14

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change removes the language dealing with specific penalties for successive DUI convictions.

SUMMARY OF THE RULE OR CHANGE: This rule change deletes language setting forth: 1) the specific penalties involved for successive DUI convictions; and 2) the factors that constitute aggravating circumstances in connection with driving under the influence (DUI) convictions.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-6-211

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** This rule change will have no impact on the state budget because removing the language dealing with specific penalties for successive DUI convictions will not affect the state's regulatory oversight of peace officer certification.
- ❖ **LOCAL GOVERNMENTS:** This rule change will have no fiscal impact on local government because local government does not regulate peace officer certification.

❖ **OTHER PERSONS:** This rule change will have no fiscal impact on other persons because other persons do not regulate peace officer certification.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs for affected persons because no one other than Peace Officer Standards and Training is involved in peace officer certification.

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

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare.

The specific penalties currently set forth in the rule for successive DUI convictions do not provide the deterrent effect needed to remove impaired drivers from the road. Regular rulemaking would take too long to allow Peace Officer Standards and Training to be able to effectively deal with the problem of impaired drivers.

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

**PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
4525 S 2700 W
SALT LAKE CITY UT 84119, or
at the Division of Administrative Rules.**

DIRECT QUESTIONS REGARDING THIS RULE TO:
Richard D. Wyss at the above address, by phone at 801-538-9600, by FAX at 801-366-0221, or by Internet E-mail at rwyss@utah.gov

THIS RULE IS EFFECTIVE ON: 03/07/2003

AUTHORIZED BY: Robert Flowers, Commissioner

**R728. Public Safety, Peace Officer Standards and Training.
R728-409. Refusal, Suspension, or Revocation of Peace Officer Certification.**

R728-409-1. Purpose.

In recent decisions made in the area of civil litigation, agencies have had to address the problem of vicarious liability. It has been found that judgments have been rendered against employing agencies who have allowed individuals who do not possess peace officer authority or have not maintained the qualifications necessary for this type of work to be employed or continue employment. In some situations, liability has been partially shifted to Peace Officer Standards and Training, provided that agencies adhere to the laws and rules developed in this area. The purpose of a procedure for the refusal, suspension, or revocation of peace officer certification/authority is to further law enforcement professionalism and to provide protection to both employing agencies and law enforcement officers alike.

R728-409-2. Authority.

The authority for the refusal, suspension or revocation of peace officer certification is authorized under Section 53-6-202 203, 205, 206, and 211.

R728-409-3. Cause to Evaluate Certification for the Refusal, Suspension, or Revocation of Peace Officer Certification or Authority.

The division may initiate an investigation when it receives an allegation that grounds for refusal, suspension, or revocation of certification exist. The initial allegation may come from any responsible source, including those provisions of R728-409-5. Pursuant to the purpose and intent of 53-6-211, revocation is a permanent deprivation of peace officer certification or authority, and except as outlined in R728-409-28 does not allow for a person who has been revoked in the State of Utah to be readmitted into any peace officer training program conducted by or under the approval of the division, or to have peace officer certification or authority reinstated or restored by the division.

Any of the following provisions may constitute cause for refusal, suspension, or revocation of peace officer certification or authority:

A. Any willful falsification of any information provided to the division to obtain certified status. The information could be in the form of written application, supplementary documentation requested or required by the division, testimony or other oral communication to the division, or any other form of information which could be considered fraudulent or false for purposes of Subsection 53-6-211(1)(d)(i).

B. "Physical or mental disability" for purposes of Section 53-6-211(1)(d)(ii), shall be defined as set forth in Utah Administrative Code, Rule R728-403-9, Physical, Emotional, or Mental Condition Requirement, and division medical guidelines.

C. Conviction of any drug related offense including the provisions of Title 58 Chapter 37.

D. "Addiction to drug or narcotics" for purposes of Section 53-6-211(1)(d)(iii) means addiction to any drug or narcotic as defined in Title 58, Chapter 37.

1. Peace officers who, in the normal course of their peace officer duties and functions, possess, attempt to simulate, unintentionally use or are forced to use, narcotics, drugs, or drug paraphernalia, shall be exempt from the provisions of Section 53-6-211(1)(d)(iii) and (v), so long as their conduct:

- a. is authorized by their law enforcement employer; and
- b. does not jeopardize the public health, safety or welfare.

2. Addiction to drugs or narcotics as a direct result of the legitimate treatment of a physical, emotional or psychological disease, or injury which is currently being treated by a licensed physician or medical practitioner licensed in this state or any other state, and which has been reported, in writing, to the law enforcement employer and P.O.S.T., shall not be considered a violation of Section 53-6-211(1)(d)(iii) so long as the addiction does not jeopardize the public health, safety or welfare.

a. Addiction to unlawfully obtained drugs or narcotics arising from circumstances not involving (a) the legitimate treatment of a physical disease; (b) circumstances involving surgery or serious injury; (c) from psychological illness; and (d) which has not been treated by a licensed physician or medical practitioner, licensed in this state or any other state, shall be considered a violation of Section 53-6-211(1)(d)(iii).

b. No applicant shall be granted peace officer certification or authority if it is demonstrated that the applicant has a drug addiction which is not under control.

c. A peace officer may have peace officer certification or authority temporarily suspended for the duration of drug rehabilitation. If the peace officer has demonstrated control of the drug addiction as determined by a division medical consultant, peace officer certification or authority shall be restored.

d. Criminal conduct by a person asserting the conduct was the result of drug addiction or dependence shall be grounds for refusal, suspension or revocation of peace officer certification or authority despite the fact that rehabilitation has not occurred prior to the peace officer certification or authority being refused, suspended or revoked.

3. Notwithstanding anything contained in this administrative rule to the contrary, a peace officer may have peace officer certification or authority revoked for conduct in violation of Section 53-6-211(1)(d)(iii), if, prior to the conduct in question, the peace officer has had a previous suspension or revocation of peace officer certification or authority under Section 53-6-211(1)(d)(iii), or similar statute of another jurisdiction.

E. Conviction of a felony.

F. "Crimes involving dishonesty" for purposes of Section 53-6-211(1)(d)(iv) means conviction for criminal conduct, under the statutes of this state or any other jurisdiction, which under the rules of evidence can be used to impeach a witness or involving, but not limited to, any of the following:

1. theft;
2. fraud;
3. tax evasion;
4. issuing bad checks;
5. financial transaction credit card offenses;
6. deceptive business practices;
7. defrauding creditors;

8. robbery;
9. aggravated robbery;
10. bribery or receiving a bribe;
11. perjury;
12. extortion;
13. falsifying government records;
14. forgery;
15. receiving stolen property;
16. burglary or aggravated burglary.

G. "Crimes involving unlawful sexual conduct" for purposes of Section 53-6-211(1)(d)(iv) means any violation described in Title 76, Chapter 5, Part 4; Chapter 5a; Chapter 7, Part 1; Chapter 10, Part 13; or Chapter 9, Part 7, Section 702 and 702.5.

H. "Crimes involving physical violence" for purposes of Section 53-6-211(1)(d)(iv) means any violation of Part 1, Assault and Related Offenses, and Part 2, Criminal Homicide, of Title 76, Chapter 5.

I. "Driving under the influence of alcohol or drugs" for purposes of Section 53-6-211(1)(d)(iv) means any violation of Section 41-6-44.

~~1. Convictions for violations of Section 41-6-44, in which no aggravating circumstances are present shall be considered in the following manner for purposes of Section 53-6-211(1)(d)(iv):~~

~~— a. a first conviction shall result in a letter of censure from the director to the peace officer, with a copy of the letter sent to the law enforcement employer.~~

~~— b. a second conviction shall result in suspension of peace officer certification or authority for a period of 0 to 12 months, as determined by the director with the concurrence of the council.~~

~~— c. a third conviction, shall result in revocation of peace officer certification or authority.~~

~~2. Any conviction for a violation of Section 41-6-44, in which one or more aggravating circumstances are present may result in refusal, suspension or revocation of peace officer certification or authority.~~

~~3. For purposes of section (1) and (2) of R728-409-3(1) above, an aggravating circumstance includes, but is not limited to, one or more of the following:~~

~~— a. false information to a peace officer;~~

~~— b. resisting arrest;~~

~~— c. felony or misdemeanor evading a peace officer;~~

~~— d. disorderly person;~~

~~— e. driving on a suspended or revoked driver license at the time of the arrest;~~

~~— f. involvement in a traffic accident while under the influence of alcohol or drugs;~~

~~— g. possession of drugs;~~

~~— h. contributing to the delinquency of a minor; or~~

~~— i. previous conviction for driving under the influence of alcohol or drugs, prior to obtaining peace officer certification or authority, whether or not the charge was reduced to reckless driving or a lesser traffic violation, and whether or not the charge was dismissed for assistance in other law enforcement investigations.~~

~~4.]Criminal conduct by an individual asserting the conduct was a result of drug addiction or dependence shall be grounds for refusal, suspension or revocation despite the fact that rehabilitation has not occurred prior to the refusal, suspension or revocation.~~

J. "Conduct or pattern of conduct" for purposes of Section 53-6-211(1)(d)(v) means an act or series of acts by a person which occur prior to or following the granting of peace officer certification or authority.

1. Conduct that shall be considered as grounds for violation of Section 53-6-211(1)(d)(v) shall include:

a. uncharged conduct which includes the conduct set forth in Rule R728-409-3, which could be considered criminal, although such conduct does not result in the filing of criminal charges against the person, but where the evidence shows that the criminal act did occur, that the person committed the act, and that the burden of proof by a preponderance of the evidence could be established by the division;

b. criminal conduct where a criminal charge is filed, a conviction is not obtained, but where the evidence shows that the criminal act did occur, that the person committed the act, and that the burden of proof by a preponderance of the evidence appears to exist;

c. criminal conduct as enumerated in Section 53-6-211(1)(d)(iv) and 53-6-203, where the filing of a criminal charge has resulted in a finding of guilt based on evidence presented to a judge or jury, a guilty plea, a plea of nolo contendere, a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation, diversion agreements, or conviction which has been expunged, dismissed, or treated in a similar manner to either of these procedures;

d. violations of Section 53-6-211(1)(d)(i) or the refusal to respond, or the failure to respond truthfully, to the questions of POST investigators asked pursuant to R728-409-5;

e. violations of Section 53-6-211(1)(d)(iii) which involve criminal conduct or jeopardize the public health, safety or welfare;

f. sexual harassment which is:

(i) conduct which rises to the level of behavior of a criminal sexual nature which includes, but is not limited to, the unwelcomed touching of the breasts of a female, buttocks or genitals of another, and or taking of indecent liberties with another;

(ii) behavior by a supervisor which creates the perception in the mind of the subordinate that the granting or withholding of tangible job benefits shall be based on the granting of sexual favors.

g. sexual conduct which is:

(i) subject to criminal punishment; or

(ii) substantially diminishes or, if known, would tend to diminish public confidence and respect for law enforcement; or

(iii) damages or, if known, would tend to damage a law enforcement department's efficiency or morale; or

(iv) impairs or, if known, would tend to impair the ability of the peace officer to objectively and diligently perform the duties and functions of a peace officer;

h. sexual activity protected by the right of privacy, that does not hamper law enforcement, shall not be grounds for refusal, suspension or revocation of peace officer certification or authority.

i. Other conduct, whether charged or uncharged, which constitutes: malfeasance in office, non-feasance in office, violates the peace officer's oath of office, or a willful and deliberate violation of Title 53, Chapter 6, or the administrative rules contained in Utah Administrative Code, Agency R728.

(i) Malfeasance for purposes of subsection (h) shall include the commission of some act which is wholly wrongful or unlawful that affects, interrupts or interferes with the performance of official duties.

(ii) Non-feasance for purposes of subsection (h) shall include the omission of an act which a peace officer by virtue of his employment as such is charged to do.

(iii) oath of office for purposes of subsection (h) shall include the swearing of a person, upon employment as a peace officer

defined in Title 77, Chapter 1a, to an oath to support, obey and defend the Constitution of the United States and the Constitution of the State of Utah and discharge the duties of the office with fidelity, or, a similar oath of a county, city or town.

j. arrest for driving under the influence of alcohol or drugs, where the elements of the offense could be established by a preponderance of the evidence.[]

~~—(i) A first conviction, with no aggravating circumstance, shall result in a letter of censure from the director to the peace officer, with a copy of the letter sent to the law enforcement employer.~~

~~—(ii) A second conviction, with no aggravating circumstance shall result in suspension of peace officer certification or authority for a period of 0 to 12 months, as determined by the director with the concurrence of the council.~~

~~—(iii) A third conviction shall result in revocation of peace officer certification or authority.]~~

k. Addiction to alcohol:

(i) if it is demonstrated that a peace officer or applicant for peace officer certification or authority has an alcohol addiction which is not under control;

(ii) a peace officer with an alcohol addiction may have peace officer certification or authority temporarily suspended for the duration of alcohol rehabilitation. If the peace officer has demonstrated control of the alcohol addiction as determined by a division medical consultant, peace officer certification or authority may be restored;

(iii) criminal conduct by an individual asserting the conduct was a result of alcohol addiction or dependence shall be grounds for refusal, suspension or revocation despite the fact that rehabilitation has not occurred prior to the refusal, suspension or revocation.

l. Acts of gross negligence or misconduct which is "clearly outrageous" or shock the conscience of a reasonable person;

(i) violations of the Law Enforcement Code of Ethics as adopted by the Council;

(ii) lying under the Garrity warning

m. A dismissal from military service under any of the following circumstances:

(i) Bad conduct discharge (BCD)

(ii) Dishonorable discharge (DD)

(iii) Administrative discharge of "General under honorable conditions" (GEN).

R728-409-4. Conduct Not in Violation of Section 53-6-211(1).

Conduct which shall not be considered a violation of this subsection includes:

A. Traffic violations other than those enumerated in Section 53-6-211(1)(d)(iv) or R728-409-3 herein; or

B. Violations of individual department policy and procedure as enumerated in Section 53-6-211(4).

R728-409-5. Investigative Procedure.

A. All investigations initiated shall be commenced upon the reasonable belief that cause exists for the refusal, suspension or revocation of peace officer, correctional officer, reserve/auxiliary officer or special function officer certification as indicated in section 409-3 above.

B. The initiation of an investigation may occur upon any of the following circumstances:

1. A peace officer who has been charged with a criminal violation of law;

2. A peace officer who has committed conduct which is a criminal act under law, but which has not been criminally charged and/or where criminal prosecution is not anticipated;

3. A peace officer who has committed conduct in violation of section 409-3 above, where the department has conducted disciplinary action and notification of the conduct has been made to the division by the peace officer's department;

4. A department which has terminated a peace officer from employment for conduct which is in violation of section 409-3 above;

5. A department which has agreed to allow a peace officer to resign, rather than terminate the employment, for conduct which is in violation of section 409-3 above;

6. A complaint from a citizen which, on its face, appears to be a violation of section 409-3 above;

7. Media attention, confirmed by the employing agency, reporting peace officer misconduct which appears to be in violation of section 409-3 above;

8. Information from a peace officer, concerning another peace officer or law enforcement department, alleging improper, unethical, or unlawful conduct in violation of section 409-3 above;

9. Information against a peace officer received from any law enforcement agency, criminal justice related agency, or political subdivision alleging improper, unethical, or unlawful conduct in violation of section 409-3 above;

10. Administrative procedures instituted by the division to uncover or reveal past criminal conduct or the character of an individual requesting peace officer certification, or entrance into a certified peace officer training program which upon completion would create eligibility for peace officer certification; and/or

11. The peace officer may be directed to respond to questions pursuant to a "Garrity Warning." Refusal to respond to questions after being warned, or the failure to respond truthfully, may result in a suspension up to two years depending on aggravating and mitigating circumstances.

C. All citizens complaining about peace officers will be requested to sign a written statement detailing the incident, swear to the accuracy of the statement, be advised that complaints found to be malicious in nature may be prosecuted under Section 76-8-511, Falsification of Government Record, and may require that the citizen submit to a polygraph examination concerning the truth and veracity of the complaint.

D. Non-criminal complaints or information about a peace officer initiated by another peace officer will be submitted in writing detailing the incident or offer the division a tape recorded statement detailing the incident.

E. A staff member will be assigned to investigate the complaint or information and to make a recommendation to proceed or to discontinue action in the matter.

1. If a peace officer under investigation is employed by a law enforcement agency, POST shall notify the peace officer's employing agency concerning the complaint or information.

2. POST will refer any complaints made by officers or citizens of a criminal nature to the appropriate agency having jurisdiction.

3. Criminal complaints will be handled by the agency having jurisdiction.

4. POST will wait until the case has been investigated by the responsible agency and the adjudicative process has been completed before taking action.

5. POST will use the investigation and the adjudicative findings to help determine its action with regard to an individual's certification. POST will do its own investigation whenever it feels the necessity to do so.

6. POST will take action based on the actual conduct of the individual as determined by an investigative process, not necessarily on the punishment or finding of the court.

7. POST's primary concern is conduct that disrupts, diminishes or otherwise jeopardizes public trust and fidelity in law enforcement.

8. Complaints that are not criminal will be investigated by the agency having jurisdiction. If the employing agency chooses not to investigate, a POST staff investigator may be assigned to conduct the investigation.

9. Witnesses and other evidence may be subpoenaed for the investigation pursuant to Section 53-6-210.

10. If ordinary investigative procedures cannot resolve the facts at issue, the peace officer may be requested to submit to a polygraph examination. Refusal to do so could result in the immediate suspension of peace officer certification until such time as an administrative proceeding can be established or other factual information has been received which no longer requires the need for the polygraph examination.

11. If an officer is found to have lied under the Garrity warning, his certification may result in a suspension up to two years depending on aggravating and mitigating circumstances.

F. Subsection (E) will be the method preferred for the investigation of alleged violations of Title 53, Chapter 6, unless special investigative procedures are determined to be more beneficial to the investigative process by the director and the council as per R728-409-7.

G. If the alleged conduct constitutes a public offense for which the individual involved has not been previously convicted, the division shall immediately notify the appropriate prosecutorial authority. If the conduct would also, if proven, constitute grounds for suspension or decertification under Section 53-6-211(1), the director in his discretion may immediately suspend the certification of the individual as provided in Section 63-46b-20 and Rule R728-409-25.

H. If immediate suspension of a peace officer's certification is believed necessary to ensure the safety and welfare of the public, or for insuring the continued public trust or professionalism of law enforcement, the director shall immediately establish the procedures for investigation and adjudicative proceedings in order to fulfill the due process rights of the peace officer.

I. Whenever an investigation is initiated the officer(s) who is under investigation and his department will be notified as soon as reasonably possible, except in cases where the nature of the complaint would make such a course of action impractical. The date and time the department administrator and the officer are notified should be noted in the appropriate space on the complaint form.

J. In all cases, where possible, the investigation shall be conducted with the full knowledge and assistance of the department administrator or the administrator of the employing political subdivision.

K. If during the course of an investigation it appears that criminal action may be involved the information is to be turned over to appropriate local authorities for disposition. It is not the position of the division to be involved in investigating criminal cases against officers. If criminal charges are pending against an officer the division may wait until the case is adjudicated before deciding if any

further action is warranted by the division (subject to subsection (5)(J) above).

L. Assigned investigators are to ensure that all investigative procedures are properly documented and recorded in the case file.

M. Final disposition of a case (i.e., close case, refer to department for follow-up action, refer for adjudicative proceeding, etc.) will be made by the deputy director with the approval of the director.

R728-409-6. Special Investigative Proceedings - Procedures.

A. The Director with the concurrence of the Council on Peace Officer Standards and Training, may initiate special investigative proceedings.

B. The purpose of the special investigative proceeding is to hear testimony and other evidence regarding violations of Chapter 6, Title 53.

C. Special investigative proceedings will be presided over by a panel of the Council on Peace Officer Standards and Training consisting of at least three Council members and any persons designated by the Council Chairman and Director of the division.

D. Direct examination of witnesses will be conducted by members of the panel.

E. The division and presiding officer may subpoena witnesses and other evidence for special investigative proceedings, as per Sections 53-6-210 and 63-46b-7(2).

F. The special investigative proceeding will be a proceeding of record by the use of tape recording and/or court reporter.

G. If an officer is found to have lied under the Garrity warning, his certification may result in a suspension up to two years depending on aggravating and mitigating circumstances.

R728-409-7. Purpose of Adjudicative Proceedings.

A. The purpose of adjudicative proceedings will be to establish whether or not:

1. the respondent did in fact commit the alleged conduct; and
2. such conduct falls within the grounds for administrative action enumerated in Section 53-6-211(1); or

3. to exonerate the respondent if the evidence presented fails to prove that the respondent committed the alleged conduct or that such conduct falls within grounds for administrative action enumerated in Section 53-6-211(1); or

4. to recommend, to the Council on Peace Officer Standards and Training and the Director of the Division of Peace Officer Standards and Training, any action to be taken with respect to the respondent if the evidence presented indicates that the respondent committed the alleged conduct and that such conduct falls within grounds for administrative action enumerated in Rule R728-409-2 above and in Section 53-6-211(1).

B. The Administrative Law Judge may recommend refusal, suspension or revocation of the respondent's peace officer, correctional officer, reserve/auxiliary officer or special function officer certification, as applicable.

C. Any decision reached by the Administrative Law Judge against the respondent involving a violation of Subsection 53-6-211(1), must meet the standard burden of proof which will be a preponderance of evidence.

R728-409-8. Commencement of Adjudicative Proceedings - Administrative Complaint.

A. Except as otherwise permitted by Sections 53-6-211(6) and 63-46b-20 and Rules R728-409-8(C) and R728-409-25, all

adjudicative proceedings shall be commenced by notice of an Administrative Complaint accompanied by a Notice of Agency Action. The Administrative Complaint will set forth the allegations complained of by the division. A copy of the Administrative Complaint and Notice of Agency Action shall be sent to the individual named on the administrative complaint and notice of agency action or by certified mail.

B. The Administrative Complaint shall be filed and served according to the following requirements:

1. when adjudicative proceedings are commenced by the division, the Administrative Complaint shall be in writing, signed by the Council Chairman and shall include:

a. the name and mailing address of the respondent, and the name and address of the agency employee or attorney designated to represent the division;

b. the division's file number or other reference number;

c. the name of the adjudicative proceeding;

d. the date that the notice of the division's action was mailed;

e. a statement indicating that a formal hearing will be conducted according to the provisions of Sections 63-46b-6 to 63-46b-11, except as otherwise indicated by Rule R728-409 in reference to time of response, as allowed under Section 63-46b-3(2)(f);

f. a statement that the respondent shall file a responsive pleading within 30 days of the mailing date of the notice of agency action;

g. a statement of the time and place of the scheduled adjudicative proceeding, a statement indicating the purpose for which the adjudicative proceeding is to be held, and a statement indicating that a party who fails to attend or participate in the adjudicative proceeding may be held in default;

h. a statement of the legal authority and jurisdiction under which the administrative proceeding is to be maintained;

i. the name, title, mailing address, and telephone number of the presiding officer; and

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

C. When the cause of action under Section 53-6-211 and Rule R728-409-3 is conviction of a felony, the following procedures shall apply:

1. The division shall send written notice to the peace officer stating that proceedings prior to revocation shall be limited to an information review of written documentation by the presiding officer, and that revocation is mandatory when the presiding officer determines that the peace officer has been convicted of a felony.

2. The notice shall state that within 15 days of the mailing date of the notice, the peace officer may request, in writing, an informal hearing before the presiding officer to present evidence that there was no felony conviction, or that the conviction has been overturned, reduced to a misdemeanor or expunged. This notice shall also state that if the peace officer does not so request, the presiding officer, and POST Council, will proceed on the documentation of conviction.

R728-409-9. Responsive Pleadings.

A. In all adjudicative proceedings, the respondent shall file and serve a written response signed by the respondent or his representative within 30 days of the mailing date of the notice of agency action, that shall include:

1. the division's file number or other reference number;

2. the name of the adjudicative proceeding;

3. a statement of the relief that the respondent seeks;

4. a statement of facts;

5. a statement summarizing the reasons that the relief requested should be granted.

B. The response shall be filed with the division.

C. The presiding officer or the division, pursuant to rule, may permit or require pleadings in addition to the notice of agency action and the response. All papers permitted or required to be filed shall be filed with the division.

R728-409-10. Consent Agreements.

A. The director may seek a consent agreement for the refusal, suspension or revocation of certification with the individual. The consent agreement will be delivered with the administrative complaint.

B. The individual will have 10 days from receiving the consent agreement to respond to the Director on the consent agreement.

C. If a consent agreement is not sought or is not reached, the procedure outlined in R728-409-9 above will proceed.

D. If a consent agreement has been signed by both parties, the adjudicative proceeding will conclude.

E. The consent agreement procedure will not extend the period of time for responsive pleading to the administrative complaint and notice of agency action.

R728-409-11. Scheduling the Adjudicative Proceeding - Hearing.

A. After the division has been served with the responsive pleading, notice of the location, date and time for the adjudicative hearing will be issued.

B. The adjudicative hearing will be held within a reasonable time after service of the responsive pleading unless a later scheduling is ordered by the presiding officer, or mutually agreed upon by the individual and the division.

C. When the cause for action is conviction of a felony, the presiding officer will conduct an informal review of the documentation within 30 days after the notice is mailed to the peace officer. If the peace officer timely requests a hearing, the presiding officer shall, within 30 days of the request, hold an informal hearing pursuant to Section 53-6-211(6).

R728-409-12. Discovery and Subpoenas.

A. In formal adjudicative proceedings parties may conduct limited discovery. The respondent is entitled to a copy of all evidence the division intends to use in the adjudicative proceeding, and other relevant documents in the agency's possession which are necessary to support his or her claims or defenses subject, however, to the Government Records Access and Management Act, UCA 63-2-101 et seq. Discovery does not extend to interrogatories, requests for admissions or depositions.

B. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence for adjudicative proceedings shall be issued by the Division of Peace Officer Standards and Training pursuant to Section 53-6-210, or the presiding officer when requested by any party, or may be issued by the presiding officer on his own motion pursuant to Section 63-46b-7.

C. Discovery is prohibited in informal proceedings.

R728-409-13. Procedures for Adjudicative Proceedings - Hearing Procedures.

A. All formal adjudicative proceedings shall be conducted as follows:

1. The presiding officer shall regulate the course of the hearing to obtain full disclosure or relevant facts and to afford all the parties reasonable opportunity to present their positions.

2. On his own motion, or upon objection by a party, the presiding officer:

a. may exclude evidence that is irrelevant, immaterial, or unduly repetitious;

b. shall exclude evidence privileged in the courts of Utah;

c. 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;

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

3. The presiding officer may not exclude evidence solely because it is hearsay.

4. The presiding officer shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.

5. The presiding officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

6. 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.

7. The hearing shall be recorded at the division's expense.

8. Any party, at his own expense, may have a person approved by the division prepare a transcript of the hearing, subject to any restrictions that the division is permitted by statute to impose to protect confidential information disclosed at the hearing.

9. All hearings shall be open to all parties.

10. This rule does not preclude the presiding officer from taking appropriate measures necessary to preserve the integrity of the hearing.

11. The respondent has the right to counsel. Counsel will not be provided by the division and all costs for counsel will be the sole responsibility of the respondent.

12. Witnesses at adjudicative hearings may have counsel present. Counsel for witnesses will not have the right to cross-examine. Counsel will not be provided by the division and all costs for counsel will be the sole responsibility of the witness.

13. Witnesses before an adjudicative hearing may be excluded from adjudicative hearing while other witnesses are testifying.

14. The presiding officer may issue an order to admonish witnesses not to discuss their testimony with other witnesses appearing to testify or offer evidence to the presiding officer at the adjudicative hearing. This order shall remain in effect until all testimony and evidence has been presented at the hearing.

15. A person's failure to comply with the admonishment order may result in the refusal to consider testimony or evidence presented, if it is deemed that the testimony or evidence has been tainted through violation of the admonishment order.

B. When the cause for action is conviction of a felony and the peace officer requests an informal hearing, it shall be conducted, except as modified by these rules, pursuant to Section 63-46b-5.

C. If the presiding officer finds, by informal review or hearing, that the peace officer has been convicted of a felony, he shall recommend revocation of certification. If the presiding officer determines that there was not a conviction, he or she may recommend action other than revocation.

R728-409-14. Procedures for Adjudicative Proceedings - Intervention.

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

1. the division's file number or other reference number;

2. the name of the proceeding;

3. a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law; and

4. a statement of the relief that the petitioner seeks from the division.

B. The presiding officer shall grant a petition for intervention if he determines that:

1. the petitioner's legal interests may be substantially affected by the adjudicative proceeding; and

2. the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

C.1. Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

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

3. The presiding officer may impose the conditions at any time after the intervention.

R728-409-15. Default.

A. The presiding officer may enter an order of default against a party if:

1. a party fails to attend or participate in the hearing; or

2. the respondent in the proceeding fails to file the response required under Rule R728-409-9.

B. The order shall include a statement of the grounds for default and shall be mailed to all parties.

C. The defaulted party may seek to have the presiding officer set aside the default order in accordance with Rule 60(b) of the Utah Rules of Civil Procedure.

D. After issuing the order for default, the presiding officer shall conduct the necessary proceedings to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party.

R728-409-16. Procedures for Adjudicative Proceedings - Recommendations.

A. In adjudicative proceedings:

1. within a reasonable time after the hearing, or after the filing of any post-hearing papers permitted by the presiding officer, the presiding officer shall sign and issue a recommendation that includes:

- a. a statement of the presiding officer's findings of fact based exclusively on the evidence of record in the adjudicative hearing or on facts officially noted;
 - b. a statement of the presiding officer's conclusions of law;
 - c. a statement of the reasons for the presiding officer's recommendation;
 - d. a statement of recommended agency action;
 - e. a notice of the right to apply for council review; and
 - f. the time limits applicable to any review.
2. The presiding officer may use his experience, technical competence, and specialized knowledge to evaluate the evidence.
3. No finding of fact that was contested may be based solely on hearsay evidence.
4. This section does not preclude the presiding officer from issuing interim orders to:
- a. notify the parties of further hearings;
 - b. notify the parties of provisional rulings on a portion of the issues presented; or
 - c. otherwise provide for the fair and efficient conduct of the adjudicative hearing.

R728-409-17. Notice of Presiding Officer's Recommendation.

- A. If the evidence against the individual does not support the conduct alleged in the administrative complaint with respect to Section 53-6-211(1), the presiding officer, hereafter referred to as Administrative Law Judge, will mail the parties a copy of the recommendation upon issuance of the recommendation.
- B. If the Administrative Law Judge finds that the evidence against the individual does support the conduct alleged in the administrative complaint with respect to Section 53-6-211(1), the Administrative Law Judge will mail the parties a copy of the recommendation upon issuance of the recommendation.
- C. The Administrative Law Judge may issue his recommendation to the parties by certified mail.

R728-409-18. Request for Review of Presiding Officer's Recommendation.

- A. Except when revocation is recommended for conviction of a felony, the parties will have 15 days from the date of issuance of the Administrative Law Judge's recommendation to request a review of the recommendation before the council.
- B. A request by any party for council review of the Administrative Law Judge's recommendation will be made in writing to the council and will contain all issues which the party wishes to raise. The request must specify whether the party is challenging the ALJ's recommended findings of fact, conclusions of law, and/or agency action. If the party is challenging the recommended findings or conclusions, the request must particularly set forth which findings and/or conclusions it wants reviewed and considered by the council. A copy of the request will be served upon all other parties.
- C. The party seeking review shall provide transcripts, documents, and briefs to the council within 45 days after the filing of the notice requesting review. If the party is challenging the recommended findings of fact or conclusions of law, it must support its request with specific references and citations to the hearing record, and copies of the evidence received by the ALJ at the hearing, and which are relevant to the challenged recommendations. If the request is based on oral testimony presented at the hearing, the party shall provide, at its expense, a transcription of that relevant testimony. No party shall be permitted oral argument before the

council unless a request for oral argument is filed with the Council within this same 45 day period.

D. The other party or parties shall have 30 days from the date the transcripts, documents and briefs are filed by the party seeking review, to file any response to the request for review. Any response may include additional transcripts or documents necessary for review.

E. The council shall whenever possible within a reasonable time from the filing of the notice requesting review to provide for a review hearing before the council.

F. Any review shall be based upon the administrative hearing record and briefs or other documents submitted by the parties. If a party has submitted portions of the hearing transcript, or other evidence admitted at the hearing, the council may, in its discretion, require the division to submit all or any other portion of the hearing transcript or evidence, and may continue the review hearing for that purpose. If necessary to make a determination, the council may also require the agency to subpoena any of the witnesses who testified in the evidentiary hearing, to appear at the next regularly scheduled council meeting, to answer questions from council members.

G. If oral argument is requested by either party, at the review hearing the parties will be permitted 20 minutes each to present oral argument on their respective positions identified in their written requests and briefs. Any testimony presented during oral argument, if offered as evidence to be considered in reaching a decision on the review, shall be given under oath.

H. If no oral argument is requested, the council shall, within a reasonable time after all documents, transcripts and briefs have been filed, issue to the director a review decision.

I. If oral argument has been received, the council, within a reasonable time after the review hearing, shall issue to the Director a review decision.

J. The council has the power to make a full review of the Administrative Law Judge's recommendation. This power includes, but is not limited to, the power to accept the ALJ's recommended findings of fact, conclusions of law, and/or agency action, or to reject all or a portion thereof, and render its own findings, conclusions and proposed action on the officer's certification.

K. Any periods of time designated in this rule for the filing of documents and pleadings, or for scheduling of hearings may be extended by the council for good cause.

R728-409-19. Council Action and Finding by Director.

A. Unless a consent order has been signed by all parties as per Rule R728-409-10 or a request for review is made to the Council as per Rule R728-409-18, and following the adjudicative proceeding or following a default by the individual as outlined in Rule R728-409-15:

- 1. The division representative will issue to the council the recommendation of the Administrative Law Judge. The council will review the Administrative Law Judge's recommendation and make a decision to concur or reject that recommendation, and to issue any alternative recommendation it may desire.
- 2. The council will issue and file its decision with the director.

R728-409-20. Director's Final Order.

- A. In adjudicative proceedings:
 - 1. After a majority of the council recommends to refuse, suspend or revoke respondent's peace officer, correctional officer, reserve/auxiliary officer, or special function officer certification, or

to take no action against respondent, the director shall prepare and issue a final order within 30 days outlining the council's decision.

2. The final order will include information on the appeal process as outlined in administrative rules R728-409-21, 22, 23.

3. The director shall, upon issuance, serve a copy of the final order on the respondent and the employing agency by certified mail.

R728-409-21. Division Review - Reconsideration.

A. Except when revocation is recommended for conviction of a felony within ten days after the date that the director's final order is issued, any party may file a written request for reconsideration, stating the specific grounds upon which relief is requested. The filing of the request is not a prerequisite for seeking judicial review of the order.

B. The request for reconsideration shall be filed with the division by the person making the request.

C.1. The director, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

2. If the director or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for rehearing shall be considered to be denied.

R728-409-22. Judicial Review - Exhaustion of Administrative Remedies.

A. A party aggrieved may obtain judicial review of final agency action only after exhausting all administrative remedies available, except that:

1. The court may relieve a party seeking judicial review of the requirement to exhaust any or all administrative remedies if:

a. the administrative remedies are inadequate; or

b. exhaustion of remedies would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion.

B.1. A party shall file a petition for judicial review of final agency action within 30 days after the date that the order constituting the final agency action is issued.

2. The petition shall name the agency and all other appropriate parties as respondents and shall meet the form requirements specified in Chapter 46b of Title 63.

R728-409-23. Judicial Review - Adjudicative Proceedings.

A. At the conclusion of formal adjudicative proceedings, the Utah Court of Appeals has jurisdiction to review the director's final order.

B. To seek judicial review of the director's final order, the petitioner shall file a petition for review of agency action in the form required by the Rules of the Utah Court of Appeals.

1. The Rules of the Utah Court of Appeals govern all additional filings and proceedings in the Utah Court of Appeals.

C. The contents, transmittal, and filing of the agency's record for judicial review of formal adjudicative proceedings are governed by the Rules of the Utah Court of Appeals, except that:

1. all parties to the review proceedings may stipulate to shorten, summarize, or organize the record;

2. the Utah Court of Appeals may tax the cost of preparing transcripts and copies for the record:

a. against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or

b. according to any other provision of law.

c. The scope of judicial review by the Utah Court of Appeals is controlled by Section 63-46b-16(4). Relief granted by the Utah Court of Appeals is controlled by Section 63-46b-17.

D. If peace officer certification is revoked for conviction of a felony after an informal hearing, the district courts have jurisdiction to review the final order pursuant to Sections 63-46b-14 and 63-46b-15.

R728-409-24. Judicial Review - Stay and Other Temporary Remedies Pending Final Disposition.

A. The director may grant a stay of the final order or other temporary remedy during the pendency of judicial review, according to the division's rules.

B. Parties shall petition the director for a stay or other temporary remedies unless extraordinary circumstances require immediate judicial intervention.

C. If the director denies a stay or denies other temporary remedies requested by a party, the director's order of denial shall be mailed to all parties and shall specify the reasons why the stay or other temporary remedy was not granted.

D. If the director has denied a stay or other temporary remedy to protect the public health, safety, or welfare against a substantial threat, the court may not grant a stay or other temporary remedy unless it finds that:

1. the director violated the division's rules in denying the stay; or

2.a. the party seeking judicial review is likely to prevail on the merits when the court finally disposes of the matter;

b. the party seeking judicial review will suffer irreparable injury without immediate relief;

c. granting relief to the party seeking review will not substantially harm other parties to the proceedings; and

d. the threat to the public health, safety, or welfare relied upon by the agency is not sufficiently serious to justify the director's action under the circumstances.

R728-409-25. Emergency Adjudicative Proceedings.

A. The division may issue an order on an emergency basis without complying with the requirements of this chapter if:

1. the facts known by the division or presented to the division show that an immediate and significant danger to the public health, safety, or welfare exists; and

2. the threat requires immediate action by the division.

B. In issuing an emergency order, the division shall:

1. limit the order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

2. issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the division's utilization of an emergency adjudicative proceeding; and

3. give immediate notice to the person who is required to comply with the order.

C. Upon the commencement of an emergency adjudicative proceeding, the division shall commence a formal adjudicative proceeding in accordance with the other provisions of this rule in order not to infringe upon any legal right or interest of any party.

R728-409-26. Civil Enforcement.

A.1. In addition to other remedies provided by law, an division may seek enforcement of an order by seeking civil enforcement in the district courts.

2. The action seeking civil enforcement of the division's order must name, as defendants, each alleged violator against whom the agency seeks to obtain civil enforcement.

3. Venue for an action seeking civil enforcement of the division's order shall be determined by the requirements of the Utah Rules of Civil Procedure.

4. The action may request, and the court may grant, any of the following:

- a. declaratory relief;
- b. temporary or permanent injunctive relief;
- c. any other civil remedy provided by law; or
- d. any combination of the foregoing.

B.1. Any person whose interests are directly impaired or threatened by the failure of the division to enforce the division's order may timely file a complaint seeking civil enforcement of that order, but the action may not be commenced;

a. until at least 30 days after the plaintiff has given notice of his intent to seek civil enforcement of the alleged violation to the director, the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;

b. if the division has filed and is diligently prosecuting a complaint seeking civil enforcement of the same order against the same or a similarly situated defendant; or

c. if a petition for judicial review of the same order has been filed and is pending in court.

2. The complaint seeking civil enforcement of the division's order must name, as defendants, the division, and each alleged violator against whom the plaintiff seeks civil enforcement.

3. Except to the extent expressly authorized by statute, a complaint seeking civil enforcement of the division's order may not request, and the court may not grant, any monetary payment apart from taxable costs.

C. In a proceeding for civil enforcement of the division's order, in addition to any other defenses allowed by law, a defendant may defend on the ground that:

1. the order sought to be enforced was issued by the division without jurisdiction to issue the order;
2. the order does not apply to the defendant;
3. the defendant has not violated the order; or
4. the defendant violated the order but has subsequently complied.

D. Decisions on complaints seeking civil enforcement of the division's order are reviewable in the same manner as other civil cases.

R728-409-27. Declaratory Orders.

A. Any person may file a request for division actions, requesting that the division issue a declaratory order determining the applicability of a statute, rule, or order within the primary jurisdiction of the division to specified circumstances.

B. The division shall not issue a declaratory order if:

1. the request is one of a class of circumstances that the division has by rule defined as being exempt from declaratory orders; or
2. the person requesting the declaratory order participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the present request.

a. The division may issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party, only if that person consents in writing to the determination of the matter by a declaratory proceeding.

C. Persons may intervene in declaratory proceedings if:

1. they meet the requirements of Rule R728-409-12; and
2. they file timely petitions for intervention according to division rules.

D. After receipt of a petition for a declaratory order, the division may issue a written order:

1. declaring the applicability of the statute, rule, or order in question to the specified circumstances;
2. setting the matter for adjudicative proceedings;
3. agreeing to issue a declaratory order within a specified time;

or

4. declining to issue a declaratory order and stating the reasons for its action.

E. A declaratory order shall contain:

1. the names of all parties to the proceeding on which it is based;
2. the particular facts on which it is based; and
3. the reasons for its conclusion.

F. A copy of all orders issued in response to a request for a declaratory proceeding shall be mailed promptly to the petitioner and any other parties.

G. A declaratory order has the same status and binding effect as any other order issued in an adjudicative proceeding.

H. Unless the petitioner and the division agree in writing to an extension, if the division has not issued a declaratory order within 60 days after receipt of the request for a declaratory order, the petition is denied.

R728-409-28. Reconsideration Based on Mistake, Fraud, or Newly Discovered Evidence.

A. Reconsideration of a decision by POST Council, and a new opportunity to be heard, may be granted for any of the following reasons:

1. The decision of POST Council was based on a mistake of law or fact;
2. There was fraud, misrepresentation or misconduct in the adjudicative proceeding; or
3. There is newly discovered material evidence which the party could not, with reasonable diligence, have discovered and produced during the adjudicative proceedings.

B. At any time after a final order is issued, either party may request reconsideration under this rule, by complying with the procedures set forth in R728-409-18(B) through (K).

C. Reconsideration by POST Council pursuant to this rule shall be a two-step process:

1. A written request and information outlining the reasons and justification for making the request shall be submitted to a special subcommittee consisting of the presidents of the Chiefs of Police Association and the Sheriffs Association, or their designees, and another POST Council member designated by the Chairman, which shall review the request and information provided and decide whether the party seeking consideration has, by a preponderance of the evidence, established that the prior decision was based on one or more of the grounds set forth above. The subcommittee will notify the director of its decision, who will then send out a notice of that decision to both parties.

2. If the subcommittee decides step one in the affirmative, the matter will be scheduled for consideration by POST Council at the next regularly scheduled meeting. POST shall give reasonable notice to the parties of the date, time and location of the meeting. POST Council shall reconsider the correct, clarified or new

evidence, and render a decision based on the written request and information and oral argument, (if such was timely requested.) Any oral testimony presented to the council shall be under oath, and subject to the penalty of perjury.

3. POST Council's decision shall be communicated to the Director, who shall then notify the parties thereof, in writing and consistent with R728-409-20. The parties will then have the same appeal rights set forth in R728-409-22, 409-23, and 409-24.

D. The definitions set forth in Utah Rules of Civil Procedures, Rules 59 and 60, and interpretive case law thereon, shall apply to determinations under this rule.

KEY: law enforcement officers, certification, investigations, rules and procedures
March 7, 2003
Notice of Continuation October 3, 2002
53-6-211



End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

Education, Administration

R277-746

Driver Education Programs for Utah
Schools

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26089
FILED: 03/12/2003, 17:05

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 53A-13-201(4) directs the State Board of Education to prescribe rules for driver education classes in the public schools.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law continues to require the State Board of Education to have a rule for driver education classes in the public schools.

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

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 03/12/2003



Education, Administration

R277-747

Private School Student Driver
Education

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26090
FILED: 03/12/2003, 17:07

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: Subsection 53A-1-401(3) allows the State Board of Education to adopt rules in accordance with its responsibilities, and Section 53A-13-203 requires school districts to allow private school students to receive driver education in the public schools.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law allows the State Board of Education to adopt rules in accordance with its responsibilities and because the law also provides for private school students to attend public school driver education classes, a rule is necessary to provide procedures regarding funding.

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

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 03/12/2003



Education, Administration
R277-751
Special Education Extended School
Year

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

DAR FILE NO.: 26091
FILED: 03/12/2003, 17:09

**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 53A-1-402(1)(c) requires the State Board of Education to establish rules for the public schools governing persons with disabilities.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law continues to require the State Board of Education to have rules for the public schools governing persons with disabilities.

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

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 03/12/2003



Education, Applied Technology
Education (Board for), Rehabilitation
R280-200
Rehabilitation

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

DAR FILE NO.: 26088
FILED: 03/12/2003, 17:04

**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 53A-24-103 creates the Utah State Office of Rehabilitation which is under the policy direction of the Utah State Board of Education. Section 53A-24-105 permits the Utah State Office of Rehabilitation to apply for, receive, administer, and distribute funds made available through programs of federal or state governments.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 53A-24-103 creates the Utah State Office of Rehabilitation which is under the policy direction of the Utah State Board of Education. Section 53A-24-105 permits the Utah State Office of Rehabilitation to apply for, receive, administer, and distribute funds made available through programs of federal or state governments. A rule is necessary to provide procedures for the Utah State Office of Rehabilitation to provide services necessary under the law.

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

EDUCATION
APPLIED TECHNOLOGY EDUCATION (BOARD FOR),
REHABILITATION
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

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 03/12/2003



**Environmental Quality, Solid and
Hazardous Waste
R315-15
Standards for the Management of Used
Oil**

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

DAR FILE No.: 26064
FILED: 03/03/2003, 11:21

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Utah Used Oil Management Act, Title 19, Chapter 6, Part 7, gives the Utah Solid and Hazardous Waste Control Board the authority to make rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, as necessary to administer Part 7 and to comply with 40 CFR 279, Standards for the Management of Used Oil, to ensure the state's primacy to manage used oil as required under 40 CFR 271. For the protection of human health and the environment, the Board may make rules to promote recycling of a valuable resource, and establish minimum standards for the collection, storage, transportation, treatment, and disposal of used oil.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received regarding a change in Section R315-15-16, clarifying grant requirements. No comments were received regarding a change in Section R315-15-11, clarifying the types of permitted used oil facilities requiring closure procedures. Comments were received regarding used oil transporter permits for used oil generated by contractors during large construction projects from the job-site to be burned at their main facility. Sections R315-15-13 and R315-15-4 were modified to address this matter and clarify transporter and transfer facility requirements. A statutory amendment regarding liability insurance requirements for do-it-yourselfer used oil collection centers resulted in a change in Section R315-15-3 to allow collection centers to meet certain criteria in lieu of liability insurance. No opposing comments to this change were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS

IN OPPOSITION TO THE RULE, IF ANY: This rule must be continued for Utah to maintain consistency and equivalency with USEPA regulations in order to retain authorization (primacy) and administer the Used Oil Program, and to promote recycling, protect public health, and ensure quality of the environment.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jim Smith at the above address, by phone at 801-538-7061, by FAX at 801-538-6715, or by Internet E-mail at jwsmith@utah.gov

AUTHORIZED BY: Dennis Downs, Director

EFFECTIVE: 03/03/2003



**Environmental Quality, Solid and
Hazardous Waste
R315-301
Solid Waste Authority, Definitions, and
General Requirements**

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

DAR FILE No.: 26092
FILED: 03/14/2003, 09:23

**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: The Utah Solid and Hazardous Waste Act, Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board may make rules that establish minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if the requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval. The U.S. Environmental Protection Agency (EPA) promulgated rules which became effective on October 9, 1993, that established minimum national standards for the operation of landfills (40 CFR parts 257 and 258). By promulgating rules that meet the minimum

EPA standards, a state may become an EPA Approved State and have primacy in the operation and enforcement of the solid waste program. Also, an approved state is allowed increased flexibility in many areas of the program. Utah became an approved state on October 8, 1993.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-301 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. A Five-Year Review and Notice of Continuation was filed with the Division of Administrative Rules on April 2, 1998. The rule has been changed several times since the Notice of Continuation to include applicable changes that have been made in the Utah Solid and Hazardous Waste Act and/or changes promulgated by EPA, or to clarify portions of the rule. Only one comment was received concerning the restrictions being placed on the disposal of waste generated at a single family farm. The rule was changed to allow solid waste generated at a single family farm to be disposed on-site only if no waste collection service was available to the farm. Prior to this change, the rule allowed the solid waste from any single family farm to be disposed on-site. Since the majority of the solid waste disposed at single family farms was by burning the waste in a "burn barrel," this method of disposal became an air quality issue. As a result, the Division of Air Quality promulgated a rule to limit the on-site disposal of solid waste from single family farms to only those who had no waste collection service available. It was explained to the commenter that the rule was changed to become consistent with existing Division of Air Quality rules.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments were received that opposed the rule as a whole. Rule R315-301 should be continued since it presents the authority under which the "Utah Solid Waste Permitting and Management Rules" (Rules R315-301 through 320) are promulgated; specifies the general requirements for the management of solid waste in Utah to protect human health and the environment; and defines the majority of the terms used in the Solid Waste Rules. Also, the rule must be continued for the State of Utah to retain its EPA approved status.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carl Wadsworth at the above address, by phone at 801-538-6769, by FAX at 801-538-6715, or by Internet E-mail at cwadsworth@utah.gov

AUTHORIZED BY: Dennis Downs, Director

EFFECTIVE: 03/14/2003

▼ ————— ▼

Environmental Quality, Solid and Hazardous Waste **R315-302** Solid Waste Facility Location Standards, General Facility Requirements, and Closure Requirements

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 26093
FILED: 03/14/2003, 09:27

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 Utah Solid and Hazardous Waste Act, Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board may make rules that establish minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if the requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval. The U.S. Environmental Protection Agency (EPA) promulgated rules which became effective on October 9, 1993, that established minimum national standards for the operation of landfills (40 CFR parts 257 and 258). By promulgating rules that meet the minimum EPA standards, a state may become an EPA Approved State and have primacy in the operation and enforcement of the solid waste program. Also, an approved state is allowed increased flexibility in many areas of the program. Utah became an approved state on October 8, 1993.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-302 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. A Five-Year Review and Notice of Continuation was filed with the Division of Administrative Rules on April 2, 1998. The rule has been changed several times since the Notice of Continuation to

include applicable changes that have been made in the Utah Solid and Hazardous Waste Act and/or changes promulgated by EPA, or to clarify portions of the rule. Comments were received on three of the rule changes. The rule was changed to clarify that a solid waste disposal facility must present and abide by a plan to exclude the disposal of prohibited waste containing Polychlorinated Biphenyls (PCBs). A commenter suggested that the Federal regulations that regulate the management of PCBs be referenced. It was explained to the commenter that all references to 40 CFR Part 761 required for the prohibition of the disposal of PCBs in a solid waste disposal facility are cited in Section R315-315-7 where the management of PCBs is specified. A commenter expressed concern that the keeping of the records required for a solid waste disposal facility would be an undue burden for an industrial landfill. It was pointed out that all landfills are required to keep certain records, most of which are needed to compile the information required in the annual report which must be submitted to the Executive Secretary. The records are not a burden, but are part of efficient operating procedures and are documentation that the facility is operating properly and meeting the conditions of the solid waste permit and the requirements of the rules. A commenter felt that it was a burden for an industry that is not based in Utah to have the plans for an industrial landfill to be certified and stamped by a professional engineer registered in the State of Utah. The requirement to have the plans of any engineered structure or feature to be certified and stamped by a professional engineer registered in Utah is a requirement of the Utah Division of Occupational and Professional Licensing. There may be reciprocity agreements between states so that an engineer that is not registered in Utah may be recognized in the State of Utah. However, most industrial landfills have no engineered structures or features and therefore, the plans for these landfills would not require the certification nor a stamp by a professional engineer.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments were received that opposed the rule as a whole. Rule R315-302 should be continued since it specifies the criteria for the location of solid waste disposal facilities; specifies the general requirements for the operation of solid waste facilities; and specifies the general requirements for closure and post-closure care of solid waste facilities. Also, the rule must be continued for the State of Utah to retain its EPA approved status.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carl Wadsworth at the above address, by phone at 801-538-6769, by FAX at 801-538-6715, or by Internet E-mail at cwadsworth@utah.gov

AUTHORIZED BY: Dennis Downs, Director

EFFECTIVE: 03/14/2003

▼ ————— ▼

Environmental Quality, Solid and Hazardous Waste **R315-303** Landfilling Standards

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 26094

FILED: 03/14/2003, 09:30

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: The Utah Solid and Hazardous Waste Act, Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board may make rules that establish minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if the requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval. The U.S. Environmental Protection Agency (EPA) promulgated rules which became effective on October 9, 1993, that established minimum national standards for the operation of landfills (40 CFR parts 257 and 258). By promulgating rules that meet the minimum EPA standards, a state may become an EPA Approved State and have primacy in the operation and enforcement of the solid waste program. Also, an approved state is allowed increased flexibility in many areas of the program. Utah became an approved state on October 8, 1993.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-303 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. A Five-Year Review and Notice of Continuation was filed with the Division of Administrative Rules on April 2, 1998. The rule has been changed several times since the Notice of Continuation to include applicable changes that have been made in the Utah Solid and Hazardous Waste Act and/or changes promulgated by EPA, or to clarify portions of the rule. No comments were received concerning the changes made in the rule since the Notice of Continuation.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments were received that opposed the rule as a whole. For the protection of human health and the environment, Rule R315-303 should be continued since it specifies the standards for performance, design, operation, and maintenance of landfills. Also, the rule must be continued for the State of Utah to retain its EPA approved status.

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

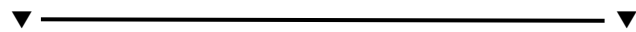
ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carl Wadsworth at the above address, by phone at 801-538-6769, by FAX at 801-538-6715, or by Internet E-mail at cwadsworth@utah.gov

AUTHORIZED BY: Dennis Downs, Director

EFFECTIVE: 03/14/2003



**Environmental Quality, Solid and
Hazardous Waste
R315-305
Class IV and VI Landfill Requirements**

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

DAR FILE NO.: 26095
FILED: 03/14/2003, 09:35

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Utah Solid and Hazardous Waste Act, Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board may make rules that establish minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if the requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval. The U.S. Environmental Protection Agency (EPA) promulgated rules which became

effective on October 9, 1993, that established minimum national standards for the operation of landfills (40 CFR parts 257 and 258). By promulgating rules that meet the minimum EPA standards, a state may become an EPA-Approved State and have primacy in the operation and enforcement of the solid waste program. Also, an approved state is allowed increased flexibility in many areas of the program. Utah became an approved state on October 8, 1993.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-305 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. A Five-Year Review and Notice of Continuation was filed with the Division of Administrative Rules on April 2, 1998. The rule has been changed several times since that Notice of Continuation to include applicable changes that have been made in the Utah Solid and Hazardous Waste Act and/or changes promulgated by EPA, or to clarify portions of the rule. No comments were received concerning the changes made in the rule since that Notice of Continuation.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments were received that opposed the rule as a whole. For the protection of human health and the environment, Rule R315-305 should be continued since it specifies the standards for the performance, design, operation, and maintenance for construction/demolition landfills. Also, the rule must be continued for the State of Utah to retain its EPA approved status.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carl Wadsworth at the above address, by phone at 801-538-6769, by FAX at 801-538-6715, or by Internet E-mail at cwadsworth@utah.gov

AUTHORIZED BY: Dennis Downs, Director

EFFECTIVE: 03/14/2003



**Environmental Quality, Solid and
Hazardous Waste
R315-306
Energy Recovery and Incinerator
Standards**

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26096
FILED: 03/14/2003, 09:43

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 Utah Solid and Hazardous Waste Act, Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board may make rules that establish minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if the requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-306 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. A Five-Year Review and Notice of Continuation was filed with the Division of Administrative Rules on April 2, 1998. The rule has been changed several times since that Notice of Continuation to include applicable changes that have been made in the Utah Solid and Hazardous Waste Act or to clarify portions of the rule. No comments were received concerning the changes made in the rule since that Notice of Continuation.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments were received that opposed the rule as a whole. For the protection of human health and the environment, Rule R315-306 should be continued since it specifies the standards for performance, design, operation, and maintenance for an incinerator facility or a facility that incinerates solid waste for energy recovery.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carl Wadsworth at the above address, by phone at 801-538-6769, by FAX at 801-538-6715, or by Internet E-mail at cwadsworth@utah.gov

AUTHORIZED BY: Dennis Downs, Director

EFFECTIVE: 03/14/2003

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Environmental Quality, Solid and Hazardous Waste **R315-307** Landtreatment Disposal Standards

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26097
FILED: 03/14/2003, 09:46

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 Utah Solid and Hazardous Waste Act, Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board may make rules that establish minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if the requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-307 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. A Five-Year Review and Notice of Continuation was filed with the Division of Administrative Rules on April 20, 1998. The rule has been changed since that Notice of Continuation to include applicable changes that have been made in the Utah Solid and Hazardous Waste Act or to clarify portions of the rule. No comments were received concerning the changes made in the rule since that Notice of Continuation.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments were received that opposed the rule as a whole. For the protection of human health and the environment, Rule R315-307 should be continued since it specifies the standards for performance, design, operation, and maintenance for a landtreatment disposal facility.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carl Wadsworth at the above address, by phone at 801-538-6769, by FAX at 801-538-6715, or by Internet E-mail at cwadsworth@utah.gov

AUTHORIZED BY: Dennis Downs, Director

EFFECTIVE: 03/14/2003



Environmental Quality, Solid and Hazardous Waste

R315-308

Ground Water Monitoring Requirements

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 26098
FILED: 03/14/2003, 09:50

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: The Utah Solid and Hazardous Waste Act, Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board may make rules that establish minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if the requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval. The U.S. Environmental Protection Agency (EPA) promulgated rules which became effective on October 9, 1993, that established minimum national standards for the operation of landfills (40 CFR parts 257 and 258). By promulgating rules that meet the minimum EPA standards, a state may become an EPA-Approved State and have primacy in the operation and enforcement of the solid waste program. Also, an approved state is allowed increased flexibility in many areas of the program. Utah became an approved state on October 8, 1993.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-308 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. A Five-Year Review and Notice of Continuation was filed with the Division of Administrative Rules on April 20, 1998. The rule has been changed several times since that Notice of Continuation to include applicable changes that have been made in the Utah Solid and Hazardous Waste Act and/or changes promulgated by EPA, or to clarify portions of the rule. No comments were received concerning the changes made in the rule since that Notice of Continuation.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments were received that opposed the rule. For the protection of human health and the environment, Rule R315-308 should be continued since it specifies the standards for design of wells, collection of samples, and testing of samples for the ground water monitoring programs at solid waste disposal facilities. Also, the rule must be continued for the State of Utah to retain its EPA approved status.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carl Wadsworth at the above address, by phone at 801-538-6769, by FAX at 801-538-6715, or by Internet E-mail at cwadsworth@utah.gov

AUTHORIZED BY: Dennis Downs, Director

EFFECTIVE: 03/14/2003



Environmental Quality, Solid and Hazardous Waste

R315-309

Financial Assurance

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 26100
FILED: 03/14/2003, 10:00

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Utah Solid and

Hazardous Waste Act, Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board may make rules that establish minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if the requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval. The U.S. Environmental Protection Agency (EPA) promulgated rules which became effective on October 9, 1993, that established minimum national standards for the operation of landfills (40 CFR parts 257 and 258). By promulgating rules that meet the minimum EPA standards, a state may become an EPA-Approved State and have primacy in the operation and enforcement of the solid waste program. Also, an approved state is allowed increased flexibility in many areas of the program. Utah became an approved state on October 8, 1993.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-309 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. A Five-Year Review and Notice of Continuation was filed with the Division of Administrative Rules on April 20, 1998. The rule has been changed several times since that Notice of Continuation to include applicable changes that have been made in the Utah Solid and Hazardous Waste Act and/or changes promulgated by EPA, or to clarify portions of the rule. No comments were received concerning the changes made in the rule since that Notice of Continuation.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments were received that opposed the rule. Rule R315-309 should be continued since it specifies the requirements and the mechanisms for financial assurance to cover closure and post-closure care costs at solid waste disposal facilities. Also, the rule must be continued for the State of Utah to retain its EPA approved status.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carl Wadsworth at the above address, by phone at 801-538-6769, by FAX at 801-538-6715, or by Internet E-mail at cwadsworth@utah.gov

AUTHORIZED BY: Dennis Downs, Director

EFFECTIVE: 03/14/2003

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Environmental Quality, Solid and Hazardous Waste **R315-310** Permit Requirements for Solid Waste Facilities

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 26099
FILED: 03/14/2003, 09:58

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 Utah Solid and Hazardous Waste Act, Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board may make rules that establish minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if the requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval. The U.S. Environmental Protection Agency (EPA) promulgated rules which became effective on October 9, 1993, that established minimum national standards for the operation of landfills (40 CFR parts 257 and 258). By promulgating rules that meet the minimum EPA standards, a state may become an EPA-Approved State and have primacy in the operation and enforcement of the solid waste program. Also, an approved state is allowed increased flexibility in many areas of the program. Utah became an approved state on October 8, 1993.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-310 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. A Five-Year Review and Notice of Continuation was filed with the Division of Administrative Rules on April 20, 1998. The rule has been changed several times since that Notice of Continuation to include applicable changes that have been made in the Utah Solid and Hazardous Waste Act and/or changes promulgated by EPA, or to clarify portions of the rule. One comment was received in which a commenter suggested a change in the language that specified the solid waste facilities for which a

permit from the Board is required. The language suggested by the commenter was incorporated into the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments were received that opposed the rule as a whole. Rule R315-310 should be continued since it specifies which solid waste facilities must obtain a permit from the Board and specifies the information that must be contained in an application for a permit to construct and operate a solid waste facility for which a permit is required. Also, the rule must be continued for the State of Utah to retain its EPA approved status.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carl Wadsworth at the above address, by phone at 801-538-6769, by FAX at 801-538-6715, or by Internet E-mail at cwadsworth@utah.gov

AUTHORIZED BY: Dennis Downs, Director

EFFECTIVE: 03/14/2003



**Environmental Quality, Solid and
Hazardous Waste
R315-311
Permit Approval for Solid Waste
Disposal, Waste Tire Storage, Energy
Recovery, And Incinerator Facilities**

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

DAR FILE NO.: 26101
FILED: 03/14/2003, 10:03

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Utah Solid and Hazardous Waste Act, Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board may make rules that establish minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid

waste disposal facilities to submit plans, prior to construction, for review to determine if the requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval. The U.S. Environmental Protection Agency (EPA) promulgated rules which became effective on October 9, 1993, that established minimum national standards for the operation of landfills (40 CFR parts 257 and 258). By promulgating rules that meet the minimum EPA standards, a state may become an EPA-Approved State and have primacy in the operation and enforcement of the solid waste program. Also, an approved state is allowed increased flexibility in many areas of the program. Utah became an approved state on October 8, 1993.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-311 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. A Five-Year Review and Notice of Continuation was filed with the Division of Administrative Rules on April 20, 1998. The rule has been changed since that Notice of Continuation to include applicable changes that have been made in the Utah Solid and Hazardous Waste Act and/or changes promulgated by EPA, or to clarify portions of the rule. No comments were received concerning the changes made in the rule since that Notice of Continuation.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments were received that opposed the rule. Rule R315-311 should be continued since it specifies the procedures followed in the review of solid waste permit applications and the issuance of the permit; procedures for modifying or terminating permits; and specifies the requirements and procedures for the public comment period. Also, the rule must be continued for the State of Utah to retain its EPA approved status.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carl Wadsworth at the above address, by phone at 801-538-6769, by FAX at 801-538-6715, or by Internet E-mail at cwadsworth@utah.gov

AUTHORIZED BY: Dennis Downs, Director

EFFECTIVE: 03/14/2003



**Environmental Quality, Solid and
Hazardous Waste
R315-312
Recycling and Composting Facility
Standards**

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

DAR FILE NO.: 26102
FILED: 03/14/2003, 10:05

**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 Utah Solid and Hazardous Waste Act, Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board may make rules that establish minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if the requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-312 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. A Five-Year Review and Notice of Continuation was filed with the Division of Administrative Rules on April 20, 1998. The rule has been changed since that Notice of Continuation to include applicable changes that have been made in the Utah Solid and Hazardous Waste Act or to clarify portions of the rule. No comments were received concerning the changes made in the rule since that Notice of Continuation.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments were received that opposed the rule. For the protection of human health and the environment, Rule R315-312 should be continued since it specifies minimum standards for the siting and operation of recycling facilities; it specifies minimum standards for the siting and operation of composting facilities and minimum standards for the finished compost; and it specifies minimum standards for the use of organic sludges on land for their soil conditioning and fertilizer value.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carl Wadsworth at the above address, by phone at 801-538-6769, by FAX at 801-538-6715, or by Internet E-mail at cwadsworth@utah.gov

AUTHORIZED BY: Dennis Downs, Director

EFFECTIVE: 03/14/2003

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**Environmental Quality, Solid and
Hazardous Waste
R315-313
Transfer Stations and Drop Box
Facilities**

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

DAR FILE NO.: 26103
FILED: 03/14/2003, 10:08

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Utah Solid and Hazardous Waste Act, Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board may make rules that establish minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if the requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-313 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. A Five-Year Review and Notice of Continuation was filed with the Division of Administrative Rules on April 28, 1998. The rule has been changed since that Notice of Continuation to include applicable changes that have been made in the Utah Solid

and Hazardous Waste Act or to clarify portions of the rule. No comments were received concerning the changes made in the rule since that Notice of Continuation.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments were received that opposed the rule. For the protection of human health and the environment, Rule R315-313 should be continued since it specifies minimum standards for siting and operating solid waste transfer stations and drop box facilities.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carl Wadsworth at the above address, by phone at 801-538-6769, by FAX at 801-538-6715, or by Internet E-mail at cwadsworth@utah.gov

AUTHORIZED BY: Dennis Downs, Director

EFFECTIVE: 03/14/2003



**Environmental Quality, Solid and
Hazardous Waste
R315-314
Facility Standards for Piles Used for
Storage and Treatment**

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

DAR FILE NO.: 26104
FILED: 03/14/2003, 10:11

**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 Utah Solid and Hazardous Waste Act, Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board may make rules that establish minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if the requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the

Plan of Operation that must be submitted to the Board by all solid waste facilities for approval.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-314 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. A Five-Year Review and Notice of Continuation was filed with the Division of Administrative Rules on April 28, 1998. The rule has been changed since that Notice of Continuation to include applicable changes that have been made in the Utah Solid and Hazardous Waste Act or to clarify portions of the rule. No comments were received concerning the changes made in the rule since that Notice of Continuation.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments were received that opposed the rule. For the protection of human health and the environment, Rule R315-314 should be continued since it specifies minimum standards for the storage or treatment of waste, including the storage of waste tires in piles.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carl Wadsworth at the above address, by phone at 801-538-6769, by FAX at 801-538-6715, or by Internet E-mail at cwadsworth@utah.gov

AUTHORIZED BY: Dennis Downs, Director

EFFECTIVE: 03/14/2003



**Environmental Quality, Solid and
Hazardous Waste
R315-315
Special Waste Requirements**

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

DAR FILE NO.: 26105
FILED: 03/14/2003, 10:16

**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 Utah Solid and

Hazardous Waste Act, Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board may make rules that establish minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if the requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval. The U.S. Environmental Protection Agency (EPA) promulgated rules which became effective on October 9, 1993, that established minimum national standards for the operation of landfills (40 CFR parts 257 and 258). By promulgating rules that meet the minimum EPA standards, a state may become an EPA-Approved State and have primacy in the operation and enforcement of the solid waste program. Also, an approved state is allowed increased flexibility in many areas of the program. Utah became an approved state on October 8, 1993.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-315 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. A Five-Year Review and Notice of Continuation was filed with the Division of Administrative Rules on April 28, 1998. The rule has been changed several times since that Notice of Continuation to include applicable changes that have been made in the Utah Solid and Hazardous Waste Act and/or changes promulgated by EPA, or to clarify portions of the rule. Comments were received on some of the proposed changes. A comment was received from the Battery Council International in support of the change to prohibit the disposal of lead acid batteries and to require these batteries to be recycled. One comment was received in which a commenter suggested a change in the language that allowed certain petroleum contaminated soils to be disposed at Class III Landfills. The language suggested by the commenter was incorporated into the rule. One commenter expressed concern that contaminated soils containing high levels of total petroleum hydrocarbons (TPH) are allowed to be disposed in unlined Class II Landfills. The rule was left as proposed since there is no information available on the health affects of TPH nor is there any information in 40 CFR 257 or 258 that could be used to set health standards for TPH.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments were received that opposed the rule as a whole. For the protection of human health and the environment, Rule R315-315 should be continued since it specifies the requirements for handling and disposing of special wastes such as asbestos; ash; bulky waste such as car bodies, furniture, and appliances; sludge; dead animals; polychlorinated biphenyl (PCB) containing wastes; petroleum contaminated soils; and waste asphalt.

Also, the rule must be continued for the State of Utah to retain its EPA approved status.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carl Wadsworth at the above address, by phone at 801-538-6769, by FAX at 801-538-6715, or by Internet E-mail at cwadsworth@utah.gov

AUTHORIZED BY: Dennis Downs, Director

EFFECTIVE: 03/14/2003

▼ ————— ▼

Environmental Quality, Solid and Hazardous Waste **R315-316** Infectious Waste Requirements

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 26106
FILED: 03/14/2003, 10:19

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Utah Solid and Hazardous Waste Act, Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board may make rules that establish minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if the requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-316 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. A Five-Year Review and Notice of Continuation was filed with the Division of Administrative Rules on April 28, 1998. The rule has been

changed since that Notice of Continuation to include applicable changes that have been made in the Utah Solid and Hazardous Waste Act or to clarify portions of the rule. No comments were received on any of the proposed changes to the rule. However, a Petition for Rule Change was received from Browning-Ferris Industries (BFI) on July 27, 1998. Rule R315-316 applies only to health facilities that generate over 200 pounds of infectious waste per month. The Petition for Rule Change requested that this limit be reduced to 50 pounds per month. The Division of Solid and Hazardous Waste requested comments on the petition from State and local health departments; dental and medical associations; and from operating health facilities. An overwhelming majority of the commenters presented the view that there was no compelling evidence of any health or environmental threat by managing infectious waste under the rule as it is written. After BFI reviewed the comments, they were in agreement and the rule was not changed.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments were received that opposed the rule as a whole. For the protection of human health and the environment, Rule R315-316 should be continued since it specifies minimum standards for the storage, transport, and disposal of infectious waste.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carl Wadsworth at the above address, by phone at 801-538-6769, by FAX at 801-538-6715, or by Internet E-mail at cwadsworth@utah.gov

AUTHORIZED BY: Dennis Downs, Director

EFFECTIVE: 03/14/2003

▼ ————— ▼

**Environmental Quality, Solid and
Hazardous Waste
R315-317
Other Processes, Variances, and
Violations**

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

DAR FILE NO.: 26107
FILED: 03/14/2003, 10:22

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Utah Solid and Hazardous Waste Act, Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board may make rules that establish minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if the requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-317 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. A Five-Year Review and Notice of Continuation was filed with the Division of Administrative Rules on April 28, 1998. The rule has been changed since that Notice of Continuation to include applicable changes that have been made in the Utah Solid and Hazardous Waste Act or to clarify portions of the rule. No comments were received on any of the proposed changes to the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments have been received that oppose the rule. Rule R315-317 should be continued since it provides owners or operators of solid waste facilities the opportunity to receive a variance from some requirements or to use alternative processes, methods, or equipment and specifies the conditions under which these may be approved by the Executive Secretary. The rule also specifies the action that the Executive Secretary may take against the owner or operator of a solid waste facility that is in violation of an approved plan of operation or permit and allows the owner or operator to request a hearing before the Utah Solid and Hazardous Waste Control Board.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carl Wadsworth at the above address, by phone at 801-538-6769, by FAX at 801-538-6715, or by Internet E-mail at cwadsworth@utah.gov

AUTHORIZED BY: Dennis Downs, Director

EFFECTIVE: 03/14/2003

▼ ————— ▼

**Environmental Quality, Solid and
Hazardous Waste
R315-318
Permit by Rule**

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

DAR FILE No.: 26108
FILED: 03/14/2003, 10:25

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Utah Solid and Hazardous Waste Act, Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board may make rules that establish minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if the requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-318 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. A Five-Year Review and Notice of Continuation was filed with the Division of Administrative Rules on April 28, 1998. The rule has been changed since that Notice of Continuation to include applicable changes that have been made in the Utah Solid and Hazardous Waste Act or to clarify portions of the rule. No comments were received on any of the proposed changes to the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments have been received that oppose the rule. Rule R315-318 should be continued since it provides a permit by rule for owners or operators of certain waste disposal facilities that are regulated by other Federal or State agencies which have rules as stringent as, or more stringent than, the Utah Solid Waste Permitting and Management Rules. In many cases, this rule

eliminates the need to have facilities regulated by more than one governmental agency.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carl Wadsworth at the above address, by phone at 801-538-6769, by FAX at 801-538-6715, or by Internet E-mail at cwadsworth@utah.gov

AUTHORIZED BY: Dennis Downs, Director

EFFECTIVE: 03/14/2003

▼ ————— ▼

**Health, Center for Health Data, Health
Care Statistics
R428-11**

**Health Data Authority Ambulatory
Surgical Data Reporting Rule**

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

DAR FILE No.: 26080
FILED: 03/10/2003, 16:12

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsection 26-33a-104(1) to "direct a statewide effort to collect, analyze, and distribute health care data to facilitate the promotion and accessibility of quality and cost-effective health care and also to facilitate interaction among those with concern for health care issues."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The last substantive amendment was implemented on July 22, 1998. Since then, no written comment on the rule per se was received. Hospitals made oral and written inquiries and comments on the draft of annual reports derived from the database, focusing on standard definitions of facility charges and the method to aggregate surgical procedures in analysis. The Office of Health Care Statistics clarified the reporting standard of facility charges and applied the 3M APC grouper software for reporting the aggregated surgical procedures.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the reporting standards for ambulatory surgery data by licensed hospitals and ambulatory surgical facilities. The data are needed to develop and maintain a statewide ambulatory surgical database. Annual public reports on Utah hospital and freestanding ambulatory surgery center utilization and charge profile have been widely used to monitor the outpatient surgery trends, cost, and quality of care for the people of Utah. Healthcare industry, researchers, and the Federal Agency for Healthcare Research and Quality have purchased the public use data files for their own uses. The uses of the data and reports are justifications for continuation of the rule.

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

HEALTH
CENTER FOR HEALTH DATA,
HEALTH CARE STATISTICS
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:

Wu Xu at the above address, by phone at 801-538-7072, by FAX at 801-538-6694, or by Internet E-mail at wxu@utah.gov

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 03/10/2003

▼ ————— ▼
**Health, Center for Health Data, Health
Care Statistics**

R428-13

**Health Data Authority. Audit and
Reporting of HMO Performance
Measures**

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 26079
FILED: 03/10/2003, 16:02

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsection 26-33a-104(1) to "direct a statewide effort to collect, analyze, and distribute health care data to facilitate the promotion and accessibility of quality and cost-effective health care and also to facilitate interaction among those with concern for health care issues."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: During the past five years, this rule was changed once in 2002 with the comments and public hearing from all licensed health plans and Utah Health Data Committee. The new rule was effective on October 1, 2002. Prior to the new rule being published on the web, the Office of Health Care Statistics received a phone inquiry from a health plan representative about mis-ordering of the item number (4) under R428-13-4. The content for the current R428-13-4(4) is missing. I have reported to the Division of Administrative Rules about this typo. I have been instructed that the Office needed to make a nonsubstantive change of the rule. We will file a separate request for a nonsubstantive change to correct the typo after submitting this renewal request.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the process for the collection and audit of HMO and health plans' performance measures from all licensed health maintenance organizations in Utah. Annual public reports on HMO performance have been widely used to monitor the quality of care for the people of Utah by public health programs, HMOs, policy makers, and healthcare purchasers and consumers. The broad uses of the data and reports are justifications for continuation of the rule.

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

HEALTH
CENTER FOR HEALTH DATA,
HEALTH CARE STATISTICS
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:

Wu Xu at the above address, by phone at 801-538-7072, by FAX at 801-538-6694, or by Internet E-mail at wxu@utah.gov

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 03/10/2003

▼ ————— ▼
**Human Services, Administration,
Administrative Services, Licensing**

R501-17

Adult Foster Care

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 26084
FILED: 03/11/2003, 10:24

**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 62A-2-101 provides for issuance of licenses upon compliance with rules as required for Human Service Programs such as Adult Foster Care.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This office has not received any written comments concerning this rule during the past 5 years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: There is an ongoing need for adult foster care as impaired children reach adulthood.

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

HUMAN SERVICES
ADMINISTRATION, ADMINISTRATIVE SERVICES,
LICENSING
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jan Bohi at the above address, by phone at 801-538-4153, by FAX at 801-538-4553, or by Internet E-mail at jbohi@utah.gov

AUTHORIZED BY: Ken Stettler, Director

EFFECTIVE: 03/11/2003

▼ ————— ▼

**Human Services, Recovery Services
R527-56
In-Kind Support**

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

DAR FILE NO.: 26075
FILED: 03/10/2003, 10:04

**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: The Office of Recovery Services is responsible for collecting child support when there is an application for child support services or the state has provided public assistance (Section 62A-11-104). Section 62A-11-307.2 specifies the duties of a custodial parent after support rights have been assigned to the state. The custodial parent may not do anything to prejudice the rights of the Office to collect support. In addition, the custodial parent may not

agree to allow the non-custodial parent to change the manner or amount of payment of support ordered by the court or administrative authority without the Office's written consent. It also states that the custodial parent must immediately deliver any payment to the Office that is received from the non-custodial parents after the assignment of support rights. If the custodial parent agrees with the non-custodial parent to receive payment of support in a different manner other than what has been ordered by the court or administrative authority, the custodial parent is required to immediately deliver the cash equivalent of the payment to the office. Under this statute, the custodial parent may not compromise the rights of the Office to recover support by making an agreement with the non-custodial parent that changes the ordered manner of paying support, whether it is entered into before or after public assistance is granted. In 1991 a court decision (Utah Dept. of Social Servs. v. Adams, 806 P.2d. 1193 (Utah Cr. App. 1991)) required that the Office give credit under certain conditions for in-kind support payments made where a court order exists. In order for credit to be given there must be a written in-kind support agreement, which predates the time the custodial parent began receiving financial public assistance and it must have been filed with the court. At the time the custodial parent applies for financial assistance, the Department of Human Services must be notified of the agreement and register no objection to it. This rule, which is enacted under the statutes described, incorporate the required elements in the court decision for granting in-kind support credit to a non-custodial parent. It confirms that the Office may take any necessary action to require that prospective support be paid in cash when that method of payment has been ordered. It clarifies that once the custodial parent has signed an application for financial assistance, or has received written notice by the Office that acceptance of financial assistance requires court-ordered cash support be paid in cash, the Office may recover the cash equivalent of in-kind support paid to him/her. It also clarifies that upon receipt of notice from the Office that an assignment of support rights is in effect, the non-custodial parent is required to make support payments in cash only, if the court has ordered that manner of payment.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule needs to be continued because it specifies when and under what conditions the Office of Recovery Services is required to give non-custodial parents credit for in-kind support payments. It also describes the conditions under which the Office may require payment of court-ordered cash support in cash only, and when it may take action to recover the cash equivalent of "in-kind support" that has been paid to the custodial parent.

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

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY UT 84102-4211, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

LeAnn Wilber at the above address, by phone at 801-536-8950, by FAX at 801-536-8509, or by Internet E-mail at lwilber@utah.gov

AUTHORIZED BY: Emma Chacon, Director

EFFECTIVE: 03/10/2003



Human Services, Recovery Services
R527-305
High-Volume, Automated Administrative
Enforcement in Interstate Child Support
Cases

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

DAR FILE No.: 26076
FILED: 03/10/2003, 10:09

**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 466(a)(14) of the Social Security Act requires a state to use automatic data processing to search various State data bases to identify the location of the non-custodial parent and his/her assets in response to a request made by another state to enforce support orders. Section 62A-11-305 specifies services that must be provided to another state when a request for "High-Volume, Automated Administrative Enforcement" is received. The Office of Recovery Services must use high-volume automated administrative enforcement, to the same extent it is used for intrastate cases, in response to a request made by another state's IV-D child support agency to enforce support orders. A request for automated administrative interstate enforcement is not considered a transfer of the cases referred to the Office caseload. These cases must receive the same priority as a two-state referral received from another state to enforce a support order. This rule establishes and provides the procedures for high-volume, automated administrative enforcement in interstate child support cases pursuant to Section 62A-11-305, and Subsection 466(a)(14).

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule needs to be continued because it provides and establishes procedures for the Office of Recovery Services to provide services to another state IV-D child support agencies requesting High-Volume Automated Administrative Enforcement. It also describes that automated administrative interstate enforcement requests are given the same priority as a regular interstate case that is referred to the Office by another state for collection services, or establishment, modification, or registration of an order.

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

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY UT 84102-4211, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

LeAnn Wilber at the above address, by phone at 801-536-8950, by FAX at 801-536-8509, or by Internet E-mail at lwilber@utah.gov

AUTHORIZED BY: Emma Chacon, Director

EFFECTIVE: 03/10/2003



Public Safety, Peace Officer Standards
and Training
R728-411

Guidelines Regarding Administrative
Action Taken Against Individuals
Functioning as Peace Officers without
Peace Officer Certification or Powers

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

DAR FILE No.: 26067
FILED: 03/04/2003, 15:00

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Section 53-6-105, which authorizes Peace Officer Standards and Training to seek administrative action against individuals performing as peace officers without certification required by Title 77, Chapter 1a.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None written 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 still necessary to protect the public from individuals that may perform as peace officers without certification and should be continued.

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

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
4525 S 2700 W
SALT LAKE CITY UT 84119, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Bonnie Braegger or Kenneth R. Wallentine at the above address, by phone at 801-965-4099 or 801-957-8531, by FAX at 801-965-4619 or 801-965-4519, or by Internet E-mail at bbraegge@utah.gov or kenwallentine@utah.gov

AUTHORIZED BY: Kenneth R. Wallentine, Administrative Counsel

EFFECTIVE: 03/04/2003

Commission to supervise and regulate all public utilities in Utah. Subsections 54-2-1(18) and (26) define sewerage corporations and water corporations as some of the utilities to be regulated by the Public Service Commission. Section 54-4-7 requires the Commission to, after a hearing, prescribe rules for utility corporations. Section 54-4-18 authorizes the Commission to ascertain and fix just and reasonable standards and practices for the utility corporations under its jurisdiction. Section 54-4-23 gives the Commission the power to establish a system of accounts for utility corporations. Rule R746-330 is the Commission's rule prescribed for those purposes.

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 substantive 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 continues to be necessary to regulate and supervise the methods and conditions of service of sewer and water utility corporations, such as the purity of water supply, meters, and the system of accounts.

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

AUTHORIZED BY: Barbara Stroud, Paralegal

EFFECTIVE: 03/10/2003

Public Service Commission,
Administration

R746-330

Rules for Water and Sewer Utilities
Operating in Utah

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

DAR FILE No.: 26081
FILED: 03/10/2003, 16:35

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 54-4-1 authorizes the

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).

Education

Administration

No. 26073 (filed 03/07/2003 at 3:27 p.m.): R277-508.
Employment of Substitute Teachers.
Enacted or Last Five-Year Review: 03/13/98 (No. 20899, 5YR, filed 03/13/98 at 1:45 p.m., published 04/01/98)
Extended Due Date: 07/11/2003

Public Safety

Peace Officer Standards and Training

No. 26069 (filed 03/04/2003 at 4:42 p.m.): R728-502.
Procedure for POST Instructor Certification.
Enacted or Last Five-Year Review: 03/04/98 (No. 20833, 5YR, filed 03/04/98 at 12:30 p.m., published 04/01/98)
Extended Due Date: 07/02/2003

No. 26070 (filed 03/04/2003 at 4:50 p.m.): R728-504.
Regional Training.
Enacted or Last Five-Year Review: 03/04/98 (No. 20834, 5YR, filed 03/04/98 at 12:30 p.m., published 04/01/98)
Extended Due Date: 07/02/2003

End of the Notices of Five-Year Review Extensions 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

Corporations and Commercial Code
No. 25549 (AMD): R154-2. Utah Uniform Commercial Code, Revised Article 9 Rules.
Published: November 15, 2002
Effective: March 14, 2003

No. 25553 (AMD): R154-10. Utah Digital Signatures Rules.
Published: November 15, 2002
Effective: March 14, 2003

Community and Economic Development

Community Development, History
No. 25787 (AMD): R212-4. Archaeological Permits.
Published: January 1, 2003
Effective: March 11, 2003

Education

Administration
No. 25965 (NEW): R277-483. Persistently Dangerous Schools.
Published: February 1, 2003
Effective: March 7, 2003

No. 25966 (NEW): R277-485. Loss of Enrollment.
Published: February 1, 2003
Effective: March 7, 2003

Environmental Quality

Drinking Water
No. 25863 (REP): R309-710. Drinking Water Source Protection Funding.
Published: January 15, 2003
Effective: March 5, 2003

Radiation Control

No. 25785 (AMD): R313-12-3. Definitions.
Published: January 1, 2003
Effective: March 14, 2003

No. 25786 (AMD): R313-28. Use of X-Rays in the Healing Arts.
Published: January 1, 2003
Effective: March 14, 2003

Health

Health Systems Improvement, Emergency Medical Services
No. 25864 (AMD): R426-100. Emergency Medical Services Do Not Resuscitate.
Published: January 15, 2003
Effective: March 14, 2003

Health Systems Improvement, Child Care Licensing
No. 25865 (AMD): R430-6. Criminal Background Screening.
Published: January 15, 2003
Effective: March 13, 2003

Health Systems Improvement, Licensing
No. 25868 (AMD): R432-3. General Health Care Facility Rules Inspection and Enforcement.
Published: January 15, 2003
Effective: March 13, 2003

No. 25791 (AMD): R432-13. Freestanding Ambulatory Surgical Center Construction.
Published: January 1, 2003
Effective: March 13, 2003

No. 25792 (AMD): R432-14. Birthing Center Construction.
Published: January 1, 2003
Effective: March 13, 2003

No. 25866 (AMD): R432-35. Background Screening.
Published: January 15, 2003
Effective: March 13, 2003

No. 25867 (AMD): R432-100-38. Emergency and Disaster Plan.
Published: January 15, 2003
Effective: March 13, 2003

Human Services

Aging and Adult Services
No. 25552 (NEW): R510-105. "Out and About" Homebound Transportation Assistance Fund Rules.
Published: November 15, 2002
Effective: March 14, 2003

Recovery Services

No. 25869 (AMD): R527-201. Medical Support Services.
Published: January 15, 2003
Effective: March 5, 2003

InsuranceAdministration

No. 25923 (AMD): R590-199. Plan of Orderly
Withdrawal Rule Relating to Health Benefit Plans.
Published:
Effective: March 14, 2003

Labor CommissionOccupational Safety and Health

No. 25941 (AMD): R614-1-4. Incorporation of Federal
Standards.
Published: February 1, 2003
Effective: March 4, 2003

Natural ResourcesAdministration

No. 25951 (AMD): R634-1. Americans With Disabilities
Complaint Procedure.
Published: February 1, 2003
Effective: March 4, 2003

DAR NOTE: The effective date filed for the proposed new rule of R655-7 that was published in the March 1, 2003, Bulletin, was inadvertently filed as a retroactive date. The notice should have been:

Natural ResourcesWater Rights

No. 25550 (NEW): R655-7. Administrative
Procedures for Notifying the State Engineer of Sewage
Effluent Use or Change in the Point of Discharge for
Sewage Effluent.
Published: November 15, 2002
Effective: February 10, 2003

DAR NOTE: The effective date filed for the amendment of R657-23 that was published in the March 15, 2003, Bulletin, was inadvertently filed as a retroactive date. The notice should have been:

Natural ResourcesWildlife Resources

No. 25890 (AMD): R657-23. Process for Providing
Proof of Completion of Hunter Education.
Published: January 15, 2003
Effective: February 16, 2003

DAR NOTE: The effective date filed for the amendment of R671-201 that was published in the February 15, 2003, Bulletin, was invalid because it purports to make changes to language that does not exist in the rule. This notice invalidates that notice as follows:

Pardons (Board of)Administration

No. 25627 (AMD): R671-201. Original Parole Grant
Hearing Schedule and Notice.
Published: December 1, 2002
Effective: [January 29, 2003]

Public SafetyFire Marshal

No. 25954 (AMD): R710-1. Concerns Servicing Portable
Fire Extinguishers.
Published: February 1, 2003
Effective: March 6, 2003

No. 25961 (AMD): R710-7. Concerns Servicing
Automatic Fire Suppression Systems.
Published: February 1, 2003
Effective: March 6, 2003

Public Service CommissionAdministration

No. 25578 (NEW): R746-347. Extended Area Service
(EAS).
Published: November 15, 2002
Effective: March 10, 2003

School and Institutional Trust LandsAdministration

No. 25953 (AMD): R850-120. Beneficiary Use of
Institutional Trust Land.
Published: February 1, 2003
Effective: March 4, 2003

Tax CommissionAdministration

No. 25823 (AMD): R861-1A-20. Time of Appeal
Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-
401, 59-1-501, 59-2-1007, 59-7-517, 59-10-533, 59-12-
114, 59-13-210, and 63-46b-3.
Published: January 1, 2003
Effective: March 11, 2003

Auditing

No. 25829 (AMD): R865-9I-26. Petition For
Redetermination of a Deficiency Pursuant to Utah Code
Ann. Section 59-10-533.
Published: January 1, 2003
Effective: March 11, 2003

No. 25828 (AMD): R865-9I-27. Redetermination of Tax
Deficiency by Tax Commission Pursuant to Utah Code
Ann. Section 59-10-525.
Published: January 1, 2003
Effective: March 11, 2003

NOTICES OF RULE EFFECTIVE DATES

No. 25826 (AMD): R865-9I-28. Petition For Redetermination of Tax Commission Action On Claim For Refund Pursuant to Utah Code Ann. Section 59-10-533.

Published: January 1, 2003

Effective: March 11, 2003

No. 25819 (AMD): R865-9I-29. Action of Tax Commission on Redetermination Claim For Refund Pursuant to Utah Code Ann. Section 59-10-535.

Published: January 1, 2003

Effective: March 11, 2003

Workforce Services

Workforce Information and Payment Services

No. 25946 (AMD): R994-406-311. Reschedule and Adjournment of Hearings.

Published: February 1, 2003

Effective: March 4, 2003

No. 25947 (AMD): R994-406-315. Finality of Decision.

Published: February 1, 2003

Effective: March 4, 2003

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, 2003, including notices of effective date received through March 14, 2003, the effective dates of which are no later than April 1, 2003. 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: The index may contain inaccurate page number references. Also, the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. These difficulties with the index are related to a new software package used by the Division to create the *Bulletin* and related publications; we hope to have them resolved as soon as possible. *Bulletin* issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	EXD = Expired
5YR = Five-Year Review	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Administrative Services					
<u>Facilities Construction and Management</u>					
R23-3	Authorization of Programs for Capital Development Projects	25639	R&R	01/02/2003	2002-23/3
R23-4	Contract Performance Review Committee and Suspension/Debarment From Consideration for Award of State Contracts	25964	5YR	01/15/2003	2003-3/62
R23-4	Contract Performance Review Committee and Suspension/Debarment From Consideration for Award of State Contracts	25783	AMD	02/04/2003	2003-1/3
R23-5	Contingency Funds	25955	5YR	01/15/2003	2003-3/62
R23-6	Value Engineering and Life Cycle Costing of State-Owned Facilities Rules and Regulations	25956	5YR	01/15/2003	2003-3/63
R23-7	Utah State Building Board Policy Statement	25770	REP	02/04/2003	2003-1/5
R23-8	Master Planning Planning Fund Use	25640	REP	01/02/2003	2002-23/5

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R23-9	Building Board State/Local Cooperation Policy	25957	5YR	01/15/2003	2003-3/63
R23-10	Naming of State Buildings	25962	5YR	01/15/2003	2003-3/64
R23-10	Naming of State Buildings	25784	AMD	02/04/2003	2003-1/5
R23-11	Facilities Allocation and Sale Procedures	25771	REP	02/04/2003	2003-1/7
R23-21	Division of Facilities Construction and Management Lease Procedures	25959	5YR	01/15/2003	2003-3/64
R23-24	Capital Projects Utilizing Non-appropriated Funds	25960	5YR	01/15/2003	2003-3/65
Alcoholic Beverage Control					
<u>Administration</u>					
R81-1-17	Advertising	25886	AMD	02/26/2003	2003-2/5
R81-5-5	Advertising	25887	AMD	02/26/2003	2003-2/8
R81-7-3	Guidelines for Issuing Permits for Outdoor or Large-Scale Public Events	25650	AMD	01/24/2003	2002-24/6
Commerce					
<u>Administration</u>					
R151-14	New Automobile Franchise Act Rules	25624	AMD	01/02/2003	2002-23/6
R151-33	Pete Suazo Utah Athletic Commission Act Rule	25649	AMD	01/15/2003	2002-24/7
R151-35	Powersport Vehicle Franchise Act Rule	25724	NEW	01/15/2003	2002-24/9
R151-46b	Department of Commerce Administrative Procedures Act Rules	25822	AMD	02/18/2003	2003-1/8
<u>Corporations and Commercial Code</u>					
R154-2	Utah Uniform Commercial Code, Revised Article 9 Rules	25549	AMD	03/14/2003	2002-22/7
R154-10	Utah Digital Signatures Rules	25553	AMD	03/14/2003	2002-22/9
<u>Occupational and Professional Licensing</u>					
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rules	25922	5YR	01/13/2003	2003-3/65
R156-47b-302a	Qualifications for Licensure as a Massage Therapist - Massage School Curriculum Standards - Equivalent Education and Training	25651	AMD	01/16/2003	2002-24/10
R156-59	Professional Employer Organization Act Rules	25920	5YR	01/09/2003	2003-3/66
R156-60a	Social Worker Licensing Act Rules	25629	AMD	01/02/2003	2002-23/8
<u>Real Estate</u>					
R162-8-9	Disclosure Requirements	25663	AMD	01/16/2003	2002-24/11
R162-107	Unprofessional Conduct	25981	5YR	01/21/2003	2003-4/52
Community and Economic Development					
<u>Community Development, History</u>					
R212-1	Adjudicative Proceedings	25630	AMD	01/06/2003	2002-23/10
R212-1	Adjudicative Proceedings	25570	AMD	01/06/2003	2002-22/10
R212-4	Archaeological Permits	25787	AMD	03/11/2003	2003-1/13
Corrections					
<u>Administration</u>					
R251-304	Contract Procedures	25885	AMD	02/19/2003	2003-2/9
R251-304	Contract Procedures	26053	5YR	02/21/2003	2003-6/17
Education					
<u>Administration</u>					
R277-470	Charter Schools	25726	AMD	01/15/2003	2002-24/12

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R277-483	Persistently Dangerous Schools	25965	NEW	03/07/2003	2003-3/5
R277-485	Loss of Enrollment	25966	NEW	03/07/2003	2003-3/7
R277-516	Library Media Certificates and Programs	25925	5YR	01/14/2003	2003-3/67
R277-518	Vocational-Technical Certificates	25926	5YR	01/14/2003	2003-3/67
R277-600	Student Transportation Standards and Procedures	25928	5YR	01/14/2003	2003-3/68
R277-605	Coaching Standards and Athletic Clinics	25931	5YR	01/14/2003	2003-3/68
R277-610	Released-Time Classes for Religious Instruction	25932	5YR	01/14/2003	2003-3/68
R277-611	Medical Recommendations by School Personnel to Parents	25647	NEW	01/03/2003	2002-23/12
R277-615	Foreign Exchange Students	25933	5YR	01/14/2003	2003-3/69
R277-700	The Elementary and Secondary School Core Curriculum	25935	5YR	01/14/2003	2003-3/69
R277-702	Procedures for the Utah General Educational Development Certificate	25936	5YR	01/14/2003	2003-3/70
R277-705	Secondary School Completion and Diplomas	25648	AMD	01/03/2003	2002-23/13
R277-709	Education Programs Serving Youth in Custody	25937	5YR	01/14/2003	2003-3/70
R277-718	Utah Career Teaching Scholarship Program	25938	5YR	01/14/2003	2003-3/71
R277-721	Deadline for CACFP Sponsor Participation in Food Distribution Program	25929	5YR	01/14/2003	2003-3/71
R277-722	Withholding Payments and Commodities in the CACFP	25930	5YR	01/14/2003	2003-3/72
R277-730	Alternative High School Curriculum	25939	5YR	01/14/2003	2003-3/72
R277-746	Driver Education Programs for Utah Schools	26089	5YR	03/12/2003	2003-7/73
R277-747	Private School Student Driver Education	26090	5YR	03/12/2003	2003-7/73
R277-751	Special Education Extended School Year	26091	5YR	03/12/2003	2003-7/74
<u>Applied Technology Education (Board for), Rehabilitation</u>					
R280-200	Rehabilitation	26088	5YR	03/12/2003	2003-7/74
R280-203	Certification Requirements for Interpreters for the Hearing Impaired	25646	AMD	01/03/2003	2002-23/16
Environmental Quality					
<u>Air Quality</u>					
R307-121	General Requirements: Eligibility of Vehicles That Use Cleaner Burning Fuels or Conversion of Vehicles and Special Fuel Mobile Equipment To Use Cleaner Burning Fuels for Corporate and Individual Income Tax Credits.	25495	AMD	01/09/2003	2002-21/6
<u>Drinking Water</u>					
R309-710	Drinking Water Source Protection Funding	25863	REP	03/05/2003	2003-2/10
<u>Environmental Response and Remediation</u>					
R311-207	Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks	25161	CPR	02/04/2003	2003-1/46
<u>Radiation Control</u>					
R313-12-3	Definitions	25785	AMD	03/14/2003	2003-1/22
R313-15	Standards for Protection Against Radiation	25943	5YR	01/14/2003	2003-3/73
R313-28	Use of X-Rays in the Healing Arts	25786	AMD	03/14/2003	2003-1/27
<u>Solid and Hazardous Waste</u>					
R315-15	Standards for the Management of Used Oil	26064	5YR	03/03/2003	2003-7/75
R315-301	Solid Waste Authority, Definitions, and General Requirements	26092	5YR	03/14/2003	2003-7/75

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R315-302	Solid Waste Facility Location Standards, General Facility Requirements, and Closure Requirements	26093	5YR	03/14/2003	2003-7/76
R315-303	Landfilling Standards	26094	5YR	03/14/2003	2003-7/77
R315-305	Class IV and VI Landfill Requirements	26095	5YR	03/14/2003	2003-7/78
R315-306	Energy Recovery and Incinerator Standards	26096	5YR	03/14/2003	2003-7/79
R315-307	Landtreatment Disposal Standards	26097	5YR	03/14/2003	2003-7/79
R315-308	Ground Water Monitoring Requirements	26098	5YR	03/14/2003	2003-7/80
R315-309	Financial Assurance	26100	5YR	03/14/2003	2003-7/81
R315-310	Permit Requirements for Solid Waste Facilities	26099	5YR	03/14/2003	2003-7/82
R315-311	Permit Approval for Solid Waste Disposal, Waste Tire Storage, Energy Recovery, And Incinerator Facilities	26101	5YR	03/14/2003	2003-7/82
R315-312	Recycling and Composting Facility Standards	26102	5YR	03/14/2003	2003-7/83
R315-313	Transfer Stations and Drop Box Facilities	26103	5YR	03/14/2003	2003-7/84
R315-314	Facility Standards for Piles Used for Storage and Treatment	26104	5YR	03/14/2003	2003-7/84
R315-315	Special Waste Requirements	26105	5YR	03/14/2003	2003-7/85
R315-316	Infectious Waste Requirements	26106	5YR	03/14/2003	2003-7/86
R315-317	Other Processes, Variances, and Violations	26107	5YR	03/14/2003	2003-7/87
R315-318	Permit by Rule	26108	5YR	03/14/2003	2003-7/87
<u>Water Quality</u>					
R317-1	Definitions and General Requirements	25636	AMD	01/30/2003	2002-23/17
R317-4-3	Onsite Wastewater Systems General Requirements	25203	AMD	01/10/2003	2002-18/43
R317-4-3	Onsite Wastewater Systems General Requirements	25635	AMD	01/30/2003	2002-23/21
R317-6-6	Implementation	25632	AMD	01/30/2003	2002-23/25
R317-7-13	Public Participation	25631	AMD	01/30/2003	2002-23/32
R317-8	Utah Pollutant Discharge Elimination System (UPDES)	25634	AMD	01/30/2003	2002-23/33
R317-9	Administrative Procedures	25633	NEW	02/05/2003	2002-23/74
R317-10	Certification of Wastewater Works Operators.	25638	AMD	01/30/2003	2002-23/78
R317-11	Certification Required to Design, Inspect and Maintain Underground Wastewater Disposal Systems, or Conduct Percolation and Soil Tests for Underground Wastewater Disposal Systems	25637	AMD	01/30/2003	2002-23/80
Health					
<u>Health Care Financing, Coverage and Reimbursement Policy</u>					
R414-5	Reduction in Outlier Reimbursements	25889	EMR	01/03/2003	2003-2/55
R414-5	Reduction in Hospital Payments	25948	EMR	01/15/2003	2003-3/52
R414-6	Reduction in Certain Targeted Case Management Services	25969	EMR	01/15/2003	2003-3/53
R414-10	Physician Services	26010	EMR	02/01/2003	2003-4/45
R414-10	Physician Services	26036	EMR	02/11/2003	2003-5/33
R414-13	Psychology Services	25907	5YR	01/03/2003	2003-3/74
R414-13	Psychology Services (5YR EXTENSION)	25192	NSC	01/03/2003	Not Printed
R414-21	Physical Therapy	25968	EMR	01/15/2003	2003-3/54
R414-27	Medicare Nursing Home Certification	25982	5YR	01/21/2003	2003-4/52
R414-52	Optometry Services	25970	EMR	01/15/2003	2003-3/57
R414-53	Eyeglasses Services	25971	EMR	01/15/2003	2003-3/59

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R414-60	Medicaid Policy for Pharmacy Copayment Procedures	26011	EMR	02/01/2003	2003-4/50
R414-301	Medicaid General Provisions	26004	5YR	01/31/2003	2003-4/53
R414-302	Eligibility Requirements	26005	5YR	01/31/2003	2003-4/53
R414-303	Coverage Groups	26012	5YR	01/31/2003	2003-4/54
R414-304	Income and Budgeting	26017	5YR	01/31/2003	2003-4/55
R414-305	Resources	26018	5YR	01/31/2003	2003-4/55
R414-306	Program Benefits	26019	5YR	01/31/2003	2003-4/56
R414-307	Eligibility Determination and Redetermination	26020	5YR	01/31/2003	2003-4/56
R414-308	Record Management	26021	5YR	01/31/2003	2003-4/57
R414-504	Nursing Facility Payments	25897	AMD	02/17/2003	2003-2/21
<u>Health Systems Improvement, Emergency Medical Services</u>					
R426-100	Emergency Medical Services Do Not Resuscitate	25864	AMD	03/14/2003	2003-2/24
<u>Center for Health Data, Health Care Statistics</u>					
R428-11	Health Data Authority Ambulatory Surgical Data Reporting Rule	26080	5YR	03/10/2003	2003-7/88
R428-13	Health Data Authority, Audit and Reporting of HMO Performance Measures	26079	5YR	03/10/2003	2003-7/89
<u>Health Systems Improvement, Child Care Licensing</u>					
R430-6	Criminal Background Screening	25921	5YR	01/10/2003	2003-3/74
R430-6	Criminal Background Screening	25865	AMD	03/13/2003	2003-2/25
R430-100	Child Care Center	25944	5YR	01/15/2003	2003-3/75
<u>Health Systems Improvement, Licensing</u>					
R432-3	General Health Care Facility Rules Inspection and Enforcement	25868	AMD	03/13/2003	2003-2/29
R432-5	Nursing Facility Construction	25452	AMD	01/15/2003	2002-21/92
R432-13	Freestanding Ambulatory Surgical Center Construction	25791	AMD	03/13/2003	2003-1/32
R432-14	Birthing Center Construction	25792	AMD	03/13/2003	2003-1/34
R432-16	Hospice Inpatient Facility Construction	26038	5YR	02/12/2003	2003-5/39
R432-35	Background Screening	25866	AMD	03/13/2003	2003-2/30
R432-100-38	Emergency and Disaster Plan	25867	AMD	03/13/2003	2003-2/33
Human Services					
<u>Administration, Administrative Services, Licensing</u>					
R501-1	General Provisions	25652	AMD	01/30/2003	2002-24/15
R501-8	Outdoor Youth Programs	25707	AMD	01/17/2003	2002-24/19
R501-11	Social Detoxification Programs	25660	AMD	01/30/2003	2002-24/25
R501-12	Child Foster Care	25644	AMD	01/30/2003	2002-23/82
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ABBREVIATIONS

AMD = Amendment
 CPR = Change in proposed rule
 EMR = Emergency rule (120 day)
 NEW = New rule
 5YR = Five-Year Review
 NSC = Nonsubstantive rule change
 REP = Repeal
 R&R = Repeal and reenact
 EXD = Expired

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	25570	R212-1	AMD	01/06/2003	2002-22/10
	25787	R212-4	AMD	03/11/2003	2003-1/13
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