

UTAH STATE BULLETIN

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

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Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114, 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.

Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Commerce Occupational and Professional Licensing

Public Hearing on Proposed Fee Schedule for Services Provided and Costs Incurred by the Division of Occupation and Professional Licensing's Designated Agent During Fiscal Year 2006-2007

The Department of Commerce will hold a hearing on Thursday, March 31, 2005, at 9:00 a.m. at the Heber M. Wells Building, 160 East 300 South, Room 210, Salt Lake City, Utah.

The purpose of the hearing is to obtain public comment on a proposed schedule for fees which could be assessed for services provided and costs related to the State Construction Registry which would be incurred by the Division's designated agent commencing May 1, 2005. The proposed fee schedule supplements the Division's fee schedule approved by the Legislature during its 2005 General Session. Subsection 63-39-3.2(5)(a) of the Budgetary Procedures Act provides an agency may establish and assess regulatory fees without legislative approval. That statute governs the process for the interim assessment of such fees prior to subsequent legislative approval.

Background: The Division assesses fees for licensure, registration, or certification of individuals and businesses to engage in certain occupations and professions. Copies of the proposed fee schedule will be distributed at the March 31, 2005, hearing.

For further information, please contact Lauri Arensmeyer at (801) 530-6214

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 February 16, 2005, 12:00 a.m., and March 1, 2005, 11:59 p.m. are included in this, the March 15, 2005, 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 April 14, 2005. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through July 13, 2005, 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.

Alcoholic Beverage Control,
Administration
R81-5-5
Advertising

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 27725
FILED: 02/25/2005, 09:20

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed rule amendment furthers the intent of Subsection 32A-5-107(18) that private clubs advertise in a manner that preserves the concept that private clubs are private and not open to the general public.

SUMMARY OF THE RULE OR CHANGE: This proposed rule amendment outlines advertising prohibitions for private clubs or their members, employees, agents, or any person under a contract or agreement with the club. These prohibitions eliminate promotional schemes that offer complimentary memberships or visitor cards to members of the general public, partial payment for memberships, or visitor cards to members of the general public; an implication that a member of the general public is entitled to a membership or visitor card, or offer to host members of the general public into a club.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107 and Subsection 32A-5-107(18)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None--No part of club membership and visitor card revenues are remitted to the State of Utah. Therefore, not allowing clubs to offer complimentary or partially-paid membership or visitor cards will not affect the State budget.

❖ **LOCAL GOVERNMENTS:** None--No part of club membership and visitor card revenues are remitted to local governments, therefore, this proposed rule amendment will not effect a cost or savings to local governments.

❖ **OTHER PERSONS:** None--Private clubs are not required to advertise, but if they choose to do so, this proposed rule amendment outlines advertising prohibitions that will preserve the concept set forth by statute that private clubs are private and not open to the general public.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Private clubs are not required to advertise, but if they choose to do so, this proposed rule amendment outlines advertising prohibitions that will preserve the concept set forth by statute that private clubs are private and not open to the general public.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule amendment could have a fiscal impact on private clubs that would like to increase their liquor and food sales by enticing members of

the general public into the club with free or discounted memberships or visitor cards or by offering to host them into the club. The Department of Alcoholic Beverage Control feels strongly that statutes designed to maintain the integrity of the private club concept must be upheld by requiring that those applying for membership or visitor cards do so in accordance with membership requirements and that clubs do not advertise otherwise. Kenneth F. Wynn, Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2005

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.

R81-5. Private Clubs.

R81-5-5. Advertising.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule furthers the intent of 32A-5-107(18) that private clubs advertise in a manner that preserves the concept that private clubs are private and not open to the general public.

(3) Application of Rule.

(+)(a) Any public [~~solicitation or public~~]advertising by a private club, its employees[~~or~~], agents, or members, or by any person under contract or agreement with the club shall clearly identify the club as being "a private club for members". In print media, this club identification information must be no smaller than 10 point bold type.

(b) A private club, its employees, agents, or members, or any person under a contract or agreement with the club may not directly or indirectly engage in or participate in any public advertising or promotional scheme that runs counter to the concept that clubs are private and not open to the general public such as:

(i) offering or providing complimentary club memberships or visitor cards to the general public;

(ii) offering or providing full or partial payment of membership fees or dues, or visitor card fees to members of the general public;

(iii) offering or implying an entitlement to a club membership or visitor card to members of the general public; or

(iv) offering to host members of the general public into the club.

KEY: alcoholic beverages

~~August 1, 2003~~ 2005

Notice of Continuation December 18, 2001

32A-1-107

32A-5-107(18)

32A-5-107(23)



Alcoholic Beverage Control, Administration

R81-5-14

Membership Fees and Monthly Dues

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27726

FILED: 02/25/2005, 10:15

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is proposed to further the intent of Subsections 32A-5-107(1) through 32A-5-107(7) that private clubs operate in a manner that preserves the concept that private clubs are private and not open to the general public.

SUMMARY OF THE RULE OR CHANGE: This proposed rule amendment specifies the minimal application fee to be charged to persons applying for a membership to a private club. It also places into rule procedures by which a hotel with a private club on the premises may assist in the issuance of a club membership to hotel guests.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107 and Subsections 32A-5-107(1) through 32A-5-107(7)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None--This proposed rule amendment does not change the membership application fee, but rather clarifies it by placing it in rule beside the monthly membership fee. For years, hotels have been permitted to assist an on-premises club in issuing a club membership to a hotel guest. This proposed rule amendment outlines the regulations for this practice.

❖ **LOCAL GOVERNMENTS:** None--State laws authorize the charge for and issuance of private club memberships. These are regulated by the Department of Alcoholic Beverage Control. Local governments will have no anticipated cost or savings as a result of this proposed rule amendment.

❖ **OTHER PERSONS:** None--Nothing in this proposed rule amendment alters what has been required or permitted for many years. The proposed amendment merely clarifies, in rule, the procedures governing the practices.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Nothing in this proposed rule amendment alters what has been required or permitted for many years. The proposed amendment merely clarifies, in rule, the procedures governing the practices.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendments to this rule will have no fiscal impact on businesses since the amendments do not alter membership application charges or the practices of hotels assisting in the issuance of memberships to hotels guests who choose to have access to private clubs located within the hotel. Kenneth F. Wynn, Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2005

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.

R81-5. Private Clubs.

R81-5-14. Membership Fees and Monthly Dues.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule furthers the intent of 32A-5-107(1) through (7) that private clubs operate in a manner that preserves the concept that private clubs are private and not open to the general public.

(3) Application of Rule.

(a) Each private club shall establish in its by-laws [initial] membership application fees and monthly membership dues in amounts determined by the club. However, the application fees shall not be less than \$4, and the monthly dues may not be less than one dollar per month.

(b) A private club, its employees, agents, or members, or any person under a contract or agreement with the club, may not, as part of an advertising or promotional scheme, offer to pay or pay for

membership application fees or membership dues in full or in part for a member of the general public.

(c) Notwithstanding section (3)(b), if a private club is located within a hotel, the hotel may assist the club in the issuance of a club membership to a guest of the hotel under the following conditions:

(i) the guest has booked a room and is staying at the hotel;

(ii) the costs of the membership application fee and membership dues are paid for by the guest either as a separate charge, or as part of the hotel room rate;

(iii) the private club receives payment of the fees and dues for all memberships issued to guests of the hotel;

(iv) the hotel and the club shall maintain a current record of each membership issued to a guest of the hotel as required by the commission;

(v) the records required by subsection (iv) shall be available for inspection by the department; and

(vi) the issuance of the membership is done in accordance with the procedures outlined in 32A-5-107(1) through (4).

KEY: alcoholic beverages

[August 1, 2003]2005

Notice of Continuation December 18, 2001

32A-1-107

32A-5-107(18)

32A-5-107(23)

▼ ————— ▼

Alcoholic Beverage Control, Administration **R81-5-17** Visitor Cards

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27727

FILED: 02/25/2005, 11:06

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is proposed to further the intent of Subsections 32A-5-107(1) through 32A-5-107(7) that private clubs operate in a manner that preserves the concept that private clubs are private and not open to the general public.

SUMMARY OF THE RULE OR CHANGE: This rule amendment is proposed for the purpose of clarifying for private club licensees, their employees, agents, members, or any person under a contract or agreement with the club, that advertising and promotional schemes that offer to purchase a visitor card in full or in part for a member of the general public are prohibited. It also places into rule the procedures by which a hotel with a private club on the premises may assist in the issuance of visitor cards to hotel guests.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107 and Subsections 32A-5-107(1) through 32A-5-107(7)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None--This proposed rule amendment does not change procedures and practices identified and intended by statute for assessing and collecting monies for visitor cards; nor does it alter the already accepted practices used by hotels to assist in the issuance of visitor cards so hotel guests may gain access to private clubs on the premises of the hotel. The proposed amendment places these procedures into written rule.

❖ **LOCAL GOVERNMENTS:** None--The assessment of visitor card fees and the regulation of visitor card memberships is controlled by the Department of Alcoholic Beverage Control. Local governments will not be fiscally impacted by the passage of this proposed rule amendment.

❖ **OTHER PERSONS:** None--Nothing in this proposed rule amendment alters what has been required or permitted for many years. The proposed amendment merely clarifies, in rule, the procedures governing these practices.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Nothing in this proposed rule amendment alters what has been required or permitted for many years. The proposed amendment merely clarifies, in rule, the procedures governing these practices.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendments to this rule will have no fiscal impact on businesses since the amendments do not alter visitor card charges or the practices of hotels assisting in the issuance of visitor cards to a hotel guest who may choose to have access to a private club on the hotel premises. Kenneth F. Wynn, Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2005

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.

R81-5. Private Clubs.

R81-5-17. Visitor Cards.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking

body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule furthers the intent of 32A-5-107(1) through (7) that private clubs operate in a manner that preserves the concept that private clubs are private and not open to the general public.

(3) Application of Rule.

(a) A private club, its employees, agents, or members, or any person under a contract or agreement with the club, may not, as part of an advertising or promotional scheme, offer to purchase or purchase in full or in part a visitor card for a member of the general public.

(b) Notwithstanding section (3)(a), if a private club is located within a hotel, the hotel may assist the club in the issuance of a visitor card to a guest of the hotel under the following conditions:

(i) the guest has booked a room and is staying at the hotel;

(ii) the cost of the visitor card is paid for by the guest either as a separate charge, or as part of the hotel room rate;

(iii) the private club receives payment of the fees for all visitor cards issued to guests of the hotel;

(iv) the hotel and the club shall maintain a current record of each visitor card issued to a guest of the hotel as required by the commission;

(v) the records required by subsection (iv) shall be kept for a period of three years and shall be available for inspection by the department; and

(vi) the issuance of the visitor card is done in accordance with the procedures outlined in 32A-5-107(6).

KEY: alcoholic beverages

[August 1, 2003]2005

Notice of Continuation December 18, 2001

32A-1-107

32A-5-107(18)

32A-5-107(23)

Commerce, Occupational and Professional Licensing

R156-38b

State Construction Registry Rules

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 27734

FILED: 02/28/2005, 16:18

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division is proposing this rule to implement the provisions of H.B. 136, 6th substitute (2004) and H.B. 105, 1st substitute (2005). (DAR NOTE: H.B. 136 is found at UT L 2004 Ch 250, and was effective 05/01/2005; and H.B. 105 can be found at: <http://www.le.state.ut.us/~2005/htmldoc/hbillhtm/HB0105S01.htm>.)

SUMMARY OF THE RULE OR CHANGE: This new rule provides for the following sections: Title, Definitions, Authority/Purpose, Duties, Functions and Responsibilities of the Division, Duties, Functions and Responsibilities of the Designated Agent, System Reliability, User Identification and Password, Transaction Log, Notices of Commencement, Preliminary Notices, Notices of Completion, Required Notifications and Requests for Notifications, Alternate Filings, Dates of Filings, Status of and Process for Filings Not Accepted by the SCR, Correction of Filings, Cancellation of Filings, Data Contained in the SCR, Fee Payment Methods, Transaction Receipts, Fee Payment Accounting, Fee Payment Collection, Indexing of State Construction Registry, Archiving Requirements, SCR (State Construction Registry) Record Classification, Registered User Access to SCR Data and Public Access to SCR Data.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 38-1-30(3)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: No additional costs to the state budget are triggered by the rule. The rule merely implements the SCR as established by the Legislature.

❖ LOCAL GOVERNMENTS: No additional costs to local governments are triggered by the rule. The rule merely implements the SCR as established by the Legislature. By statute, local governments are required to submit building permit data to the SCR, which constitute the notice of commencement. This is a new requirement imposed by statute. Local governments are exempt from any filing fees. The designated agent is creating upload capability to minimize any impact on compliance agencies. In essence, the information will be uploaded from existing databases maintained by these agencies.

❖ OTHER PERSONS: No additional costs are triggered by the rule. The rule merely implements the SCR as established by the Legislature. Before the passage of H.B. 136, 6th substitute (2004), notices of commencement and preliminary notices were required for commercial projects. These were filed by certified or registered mail at county recorder offices. H.B. 136 added an optional notice of completion filing and extended the entire filing scheme to residential projects as well. The impact is a cost savings on commercial projects and an additional cost on residential projects. Neither the Division nor its designated agent are able to determine the filing volume at this time and associated savings or costs. Proposed filing fees are as follows: Online/Electronic Fees: Notice of Commencement \$7.50; Preliminary Notice \$1; Notice of Commencement \$7.50; Requested Notifications \$10; Receipt Retrieval (within 2 years) \$1; Receipt Retrieval (beyond 2 years) \$5; Annual Account Set-Up (auto-bill) \$60 and Annual Account Set-Up (invoice) \$100; Offline/Alternate Fees: Notice of Commencement \$15; Preliminary Notice \$6; Notice of Commencement \$15; Required Notifications \$6; Requested Notifications \$25; Receipt Retrieval (within 2 years) \$6; Receipt Retrieval (beyond 2 years) \$12.50; Annual Account Set-Up (auto-bill) \$75; and Annual Account Set-Up (invoice) \$125.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional costs are triggered by the rule. The rule merely implements the SCR as established by the Legislature. Before the passage of H.B. 136, 6th substitute (2004), notices of commencement and preliminary notices were required for commercial projects. These were filed by certified or registered mail at county recorder offices. H.B. 136 added an optional notice of completion filing and extended the entire filing scheme to residential projects as well. The impact is a cost savings on commercial projects and an additional cost on residential projects. Neither the Division nor its designated agent are able to determine the filing volume at this time and associated savings or costs. Proposed filing fees are as follows: Online/Electronic Fees: Notice of Commencement \$7.50; Preliminary Notice \$1; Notice of Commencement \$7.50; Requested Notifications \$10; Receipt Retrieval (within 2 years) \$1; Receipt Retrieval (beyond 2 years) \$5; Annual Account Set-Up (auto-bill) \$60 and Annual Account Set-Up (invoice) \$100; Offline/Alternate Fees: Notice of Commencement \$15; Preliminary Notice \$6; Notice of Commencement \$15; Required Notifications \$6; Requested Notifications \$25; Receipt Retrieval (within 2 years) \$6; Receipt Retrieval (beyond 2 years) \$12.50; Annual Account Set-Up (auto-bill) \$75; and Annual Account Set-Up (invoice) \$125.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing implements the State Construction Registry and adopts rules as required by H.B. 136, 6th Substitute (2004) (Electronic Filing of Preliminary Lien Documents) and H.B. 105, 1st Substitute (2005) (Construction Filing Amendments). Therefore, this rule filing presents no additional fiscal impact to businesses beyond those previously addressed in passage of H.B. 136 and the anticipated passage of H.B. 105. Russell C. Skousen

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
W. Ray Walker or Lauri Arensmeyer at the above address, by phone at 801-530-6256 or 801-530-6214, by FAX at 801-530-6511 or 801-530-6511, or by Internet E-mail at raywalker@utah.gov or LArensmeyer@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 04/14/2005

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 3/31/2005 at 9:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 210, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2005

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
R156-38b. State Construction Registry Rules.
R156-38b-101. Title.

These rules are known as the "State Construction Registry Rules".

R156-38b-102. Definitions.

In addition to the definitions in Section 38-1-27, State Construction Registry -- Form and contents of notice of commencement, preliminary notice, and notice of completion; Title 58, Chapter 1, Division of Occupational and Professional Licensing Act; and Rule R156-1, General Rules of the Division of Occupational and Professional Licensing; which shall apply to these rules, as used in the referenced statutes or these rules:

(1) "Alternate method or process" means transmission by telefax, by U.S. mail, or by private commercial courier.

(2) "Electronic" or "Electronically" means transmission by Internet or by electronic mail and does not mean a transmission by alternate methods or process.

(3) "J2EE" means SUN Microsystem's Java 2 Platform, Enterprise Edition, for multi-tier server-oriented enterprise applications.

(4) "Merge" means to link two or more filings together under a unique project number as required by Subsection 38-1-31(1)(d).

(5) "SCR" means the State Construction Registry established in Sections 38-1-27 and 38-1-30 through 38-1-37.

R156-38b-103. Authority - Purpose.

These rules are adopted by the Division under the authority of Sections 38-1-27 and 38-1-30 through 38-1-37 to administer the SCR.

R156-38b-201. Duties, Functions, and Responsibilities of the Division.

In accordance with Section 38-1-30(3)(a), the duties, functions, and responsibilities of the Division are oversight and enforcement of the Act, and include:

(1) establishing rules to implement the SCR;

(2) providing oversight of the design, operation, and maintenance of the SCR; and

(3) auditing the functionality and integrity of the SCR.

R156-38b-301. Duties, Functions, and Responsibilities of the Designated Agent.

In accordance with Subsection 38-1-30(3)(b), the duties, functions, and responsibilities of the designated agent include:

(1) designing, developing, hosting, operating, and maintaining the SCR;

(2) providing training, marketing, and technical support for the SCR;

(3) performing other duties, functions, and responsibilities provided by statute, rule, or contract; and

(4) obtaining and maintaining insurance coverage as follows:

(a) general liability insurance as required by Subsection 38-1-35(2)(b), which at a minimum shall be the amount established for the designated agent's master contract with the State of Utah; and

(b) errors and omissions insurance as required by Subsection 38-1-30(5), may be satisfied by the designated agent's current policy that insures its parent company and all subsidiaries in the amount of \$5 Million.

R156-38b-401. System Reliability.

The designated agent shall provide a reliable hosting environment which shall contain the following elements:

(1) Operating Standard. The SCR shall initially adhere to the J2EE standard and such standard in the future as the Division shall designate in cooperation with the designated agent.

(2) System Upgrades. The designated agent shall notify the Division when the SCR requires an update that may cause significant service interruption. Functional or structural changes that impact the system requirements shall require prior approval from the Division.

(3) Security. The designated agent shall take commercially reasonable steps to provide that the information contained in the SCR is secure and protected from unauthorized entry.

(4) System Backup. The designated agent shall provide adequate backup of the system and its data, including the following:

(a) Redundant Servers. There shall be multiple servers running the SCR and Internet environments, but no more than two sets of servers.

(b) Data Backup Environment. There shall be facilities to continuously back up data contained in the SCR. This backed-up data must be easily retrieved and either viewed or placed back into the SCR if required.

(c) Redundant Power Supply. Provide a single reliable redundant power supply for entire environment.

(5) System Recovery. In the event of a system failure, the designated agent shall provide system recovery and re-deployment to meet a standard that will result in restoration into full production within a maximum of three business days. In the event of destruction of the designated agent's primary hosting facility, the designated agent shall meet a standard whereby complete service restoration could be implemented within two weeks provided the telecommunications and data center vendor can meet this schedule.

(6) Software Licensing. The designated agent shall maintain legitimate software licenses for all purchased software used for the SCR.

(7) System Monitoring. Provide continuous monitoring of SCR environment.

(8) System Support. Provide appropriate personnel to continuously maintain the SCR environment.

(9) Continuity of Operations. In the event that, for whatever reason, operation and maintenance of the SCR is transferred to the state or another designated agent, continuity of the SCR shall be maintained in accordance with the governing contractual provisions with the designated agent.

(10) In the event that the Division elects to provide some of the services listed in (1) through (8) above, the designated agent will be relieved of the responsibilities for the services so assumed. Such election by the Division shall be in writing.

R156-38b-402. User Identification and Password.

(1) All users are required to register with the SCR and be assigned a unique user ID and password to gain access to the SCR. The information gathered in the registration process shall be maintained in the SCR as the user profile. The registration process shall include the following information and any other information

established by the Division in collaboration with the designated agent:

(a) first and last name of the individual registering;

(b) entity name if the individual represents an entity, and any DBA name(s);

(c) individual's position or title if the individual represents an entity;

(d) mailing address;

(e) phone number;

(f) email address, if any;

(g) preferred method of submitting payment to the SCR, as defined in a pre-populated pick list.

(2) The SCR shall provide the ability for a user to view and modify the user's profile.

(3) The SCR shall provide an industry accepted secure method for a user to recover a forgotten user ID or password.

(4) The SCR shall pre-populate filings with any information available in the user's profile.

(5) The account will not be effective until the fee, established by the Division in collaboration with the designated agent, is received.

R156-38b-403. Transaction Log.

The designated agent shall maintain a transaction log of the SCR that includes a transaction trail of completed transactions by registered user.

R156-38b-501. Notices of Commencement.

(1) Content Requirements. The content of notices of commencement shall be in accordance with Subsection 38-1-31(2).

(2) Persons Who Must File Notices. In accordance with Subsections 38-1-31(1)(a) and (b), the following are required to file a notice of commencement:

(a) For a construction project where a building permit is issued, within 15 days after the issuance of the building permit, the local government entity issuing that building permit shall input the data and transmit the building permit information to the database electronically or by alternate method and such building permit information shall form the basis of a notice of commencement. The local government entity may not transfer this responsibility to the person who is issued or is to be issued the building permit.

(b) For a construction project where a building permit is not issued, within 15 days after commencement of physical construction work at the project site, the original contractor shall file a notice of commencement with the SCR.

(3) Persons Who May File Notices.

(a) In accordance with Subsection 38-1-31(1)(c), an owner of a construction project, a lender, surety, or other interested party may but is not required to file a notice of commencement with the designated agent within the prescribed time set forth in Subsection 38-1-31(1)(a) or (b).

(4) Methodology.

(a) Electronic notice of commencement filings shall be input into the SCR by the person making the filing and shall not be accepted by the SCR unless the person complies with the content requirements for filing a notice of commencement.

(b) Alternate method notice of commencement filings shall be in accordance with this Section and Section R156-38-505.

(c) Checking for Existing Notices. In order to prevent duplicate filings of notices of commencement, a search of the SCR shall be performed for any existing notices of commencement and

existing filed amendments before creating a new notice of commencement for a project.

(i) If an existing notice of commencement is identified the following procedures apply:

(A) For an electronic filing by the person attempting to file the new notice of commencement, the SCR shall indicate that a notice of commencement may have already been filed for the project and display the possible notice or notices of commencement that may match the existing project filing. The SCR shall allow the user to review the content of any existing notices to determine whether a notice has already been filed for the project before allowing a new notice to be filed.

(I) If a notice of commencement already exists for the project but the person attempting to file the notice of commencement believes the content of the filing is not accurate, the person shall be given the option of submitting amendments to the content of the notice. The SCR shall reflect the submission date of the amendments, but the filing date of the notice shall remain unchanged. If the person attempting to file the new notice of commencement believes the existing notice is accurate, the system shall permit the proposed new filing to be terminated.

(B) For an alternate method filing, input by the designated agent for the person filing the notice of commencement, the designated agent shall notify the person by electronic or alternate method as specified by the filer, that a notice of commencement has already been filed for the particular project and include a copy of the existing notice of commencement. In addition, the user will be notified that the notice of commencement will be added to the construction project as an amendment to the original filing in the SCR and the appropriate fee will be charged.

(ii) As part of the process described in Subsection R156-38b-501(4)(c)(i), the SCR search for an existing notice of commencement shall display, for review by the person who submitted the search parameters, all notice of commencement filings that fit the search parameters indicated by the submission that prompted the search. The purpose of this requirement is to enable the person to properly identify any existing notice of commencement before a new notice of commencement is created, to avoid duplicate notice of commencement filings.

(iii) If no existing notice of commencement is identified for the particular project, the SCR shall allow the person who submitted the filing to file a new notice of commencement.

(d) Creation of New Notices.

(i) A new notice of commencement shall not be accepted into the SCR until the SCR system has checked for an existing notice in accordance with the procedures outlined in Subsection R156-38b-501(4).

(ii) In accordance with Subsection 38-1-31(1)(d), when a new notice of commencement filing is accepted into the SCR, the SCR shall assign the project a unique project number that identifies the project and can be associated with all future notices of commencement, preliminary notices, notices of completion, and requests for notification applicable to the project.

(e) Merging of Duplicate Filings. Duplicate filings shall be avoided to the extent possible in accordance with the procedure outlined in this Subsection. The SCR shall include functionality to allow a person who has successfully filed a notice of commencement which duplicates another notice of commencement already in the SCR to merge the notice of commencement with the existing notice of commencement filing.

(i) The SCR shall reflect the effective date of the merger.

(ii) The SCR shall provide notification of the merger to all persons who are associated with either notice of commencement filing, including those who have filed preliminary notices.

(iii) The effective date of a merger reflects the date the unique merger number was cross-referenced to duplicate notice of commencement filings. A merger does not dissolve or affect the filing dates, or the consequences of the filing dates, of the notices being combined.

(f) Resolving Multiple or Inconsistent Property Descriptions.

(i) The person making a notice of commencement filing shall be responsible for correctly identifying a project, and for the consequences of failing to correctly identify a project.

(ii) Neither the division nor the designated agent shall be responsible for the consequences of a person making a notice of commencement filing that identifies a project in such a way that the SCR is unable to identify an existing notice of commencement for the project, according to the search criteria established by the Division in collaboration with the designated agent, nor for the SCR allowing the person to make a successful duplicate notice of commencement filing with a different description of the project.

R156-38b-502. Preliminary Notices.

(1) Content Requirements. The content of a Preliminary Notice shall be in accordance with Subsection 38-1-32(1)(d).

(2) Methodology.

(a) Electronic preliminary notice filings shall be input into the SCR entry screen by the person making the filing but shall not be accepted by the SCR unless the person complies with the content requirements for filing a preliminary notice. The SCR is responsible for requiring that some data be submitted for each of the content requirements, but it is not responsible for the accuracy, suitability or coherence of the data.

(b) Alternate method preliminary notice filings shall be in accordance with Section R156-38b-505.

(c) Preliminary notice filing submitted before notice of commencement filing.

(i) A preliminary notice for a project may not be filed until the project has an existing notice of commencement. A person who attempts to submit a preliminary notice filing before a notice of commencement has been filed may either:

(A) file the notice of commencement as an interested party to enable the filing of the preliminary notice; or

(B) wait for the notice of commencement to be filed by someone else to enable the filing of his or her preliminary notice.

(i) A person who attempts to submit a preliminary notice filing before a notice of commencement has been filed and who can identify the project, using the building permit number or other identifier adopted by the Division in collaboration with the designated agent, may request notification of the filing of a notice of commencement for the project.

(ii) A preliminary notice filing that is not accepted by the SCR because it is submitted before a notice of commencement has been filed shall be in accordance with Section R156-38b-507.

R156-38b-503. Notices of Completion.

(1) Content Requirements. In accordance with Section 38-1-33, the content of a notice of completion shall include the indication of the status of the filer as an owner of the project, an original contractor, a lender that has provided financing for the project, or a surety that has provided bonding for the project; identification of the construction project by a means acceptable to the Division in

collaboration with the designated agent to which the notice of completion applies; and a declaration of how final completion was determined, in particular, whether completion was determined by:

(a) the issuance of a permanent certificate of occupancy by the local government entity having jurisdiction over the construction project as specified in Subsection 38-1-33(1)(a)(i);

(b) the final inspection of the construction project by the local government entity having jurisdiction over the construction project because no certificate of occupancy was required, as specified in Subsection 38-1-33(1)(a)(ii); or

(c) a determination that no substantial work remained to be completed to finish the construction project because no certificate of occupancy or final inspection were required, as specified in Subsection 38-1-33(1)(a)(iii);

(2) Methodology.

(a) Electronic notice of completion filings shall be input into the SCR input screen by the person making the filing but shall not be accepted by the SCR unless the person complies with the content requirements for filing a notice of completion. The SCR is responsible for requiring that some data be submitted for each of the content requirements, but it is not responsible for validating the accuracy, suitability or coherence of the data.

(b) Alternate method notice of completion filings shall be in accordance with Section R156-38b-505.

R156-38b-504. Required Notifications and Requests for Notifications.

(1) Required Notifications. The designated agent or the SCR shall send the following required notifications:

(a) notification of the filing of a notice of commencement to a person who has filed a notice of commencement for the project, as required by Subsection 38-1-31(4)(a);

(b) notification of the filing of a preliminary notice to the person who filed the preliminary notice, as required by Subsection 38-1-32(2)(a)(i);

(c) notification of the filing of a preliminary notice to each person who filed a notice of commencement for the project, as required by Subsection 38-1-32(2)(a)(ii);

(d) notification of the filing of a notice of completion to each person who filed a notice of commencement for the project, as required by Subsection 38-1-33(1)(d)(i)(A); and

(e) notification of the filing of a notice of completion to each person who filed a preliminary notice for the project, as required by Subsection 38-1-33(1)(d)(i)(B).

(2) Permissible Requests for Notifications. The following requests for notifications may be submitted to the SCR:

(a) requests by any interested person who requests notification of the filing of a notice of commencement for a project, as permitted by Subsection 38-1-31(4)(b);

(b) requests by any interested person who requests notification of the filing of a preliminary notice, as permitted by Subsection 38-1-32(2)(a)(iii); and

(c) requests by any interested person who requests notification of the filing of a notice of completion, as permitted by Subsection 38-1-33(1)(d)(i)(C).

(3) Content Requirements for Requests for Notification. The content of a request for notification shall include:

(i) identification of the project by a method designated by the Division in collaboration with the designated agent;

(ii) name of the requestor;

(iii) the filing for which notification is requested; and

(iv) an electronic or alternate method address or telefax number for a response.

(4) Methodology.

(a) Automatic Response System. The SCR shall, to the extent practicable, be designed to require or generate the necessary information to support an automatic response system and documentation of automatic response system in order to handle requests for and required sending of notifications.

(b) Necessary Information. The information to be required from filers or generated to enable an automatic response system and documentation of response system shall include:

(i) the date requests for notification were accepted;

(ii) the method by which requests for notification are to be sent;

(iii) unique identification of the construction project;

(iv) the date a notification is sent in response to a requests for notification; and

(v) the mailing address, electronic mail address, or telefax number used to respond to a request for notification.

(c) Electronic Requests. Electronic requests shall be responded to electronically unless directed otherwise by the person filing the request.

(d) Alternate Method or Process Requests. Alternate method requests shall be responded to in the method requested by the requestor.

R156-38b-505. Alternate Filings.

(1) Alternate Methods of Filing. The alternate methods of filing are those established by Subsections 38-1-27(2)(e)(ii), i.e., U.S. Mail and telefax. Private commercial courier is established as an additional alternate method of receipt by the designated agent, but not dispatch from the designated agent.

(2) Content Requirements. The content requirements for alternate method filings shall be the same as for electronic filings as set forth for Notices of Commencement, Preliminary Notices, and Notices of Completion in Sections 38-1-31, 38-1-32, and 38-1-33, respectively, or these rules.

(3) Format Requirements. Alternate method filings shall be submitted in a standard format adopted by the Division in collaboration with the designated agent. Filings not submitted in the standard format, in the sole judgment of the designated agent, shall be rejected and dispatched to the submitter. The filing fee shall be retained by the designated agent as a processing fee for rejecting and dispatching the filing. An additional filing fee shall be due upon resubmission.

(4) Methodology.

(a) U.S. Mail. An alternate method filing by U.S. Mail shall be submitted to the designated agent's mailing address by any method of U.S. Mail.

(b) Express Mail. An alternate method filing by commercial private courier shall be submitted to the designated agent's mailing address by any commercially available method of express mail.

(c) Telefax. An alternate method filing by telefax shall be submitted to the designated agent's toll-free unique SCR fax number.

(5) Processing Requirements.

(a) Transaction Receipt. The designated agent shall confirm a successful alternate method filing and fee payment receipt by sending a transaction receipt as specified in Section R156-38b-602.

(b) Creation of Electronic Image. The designated agent shall create and maintain an electronic image of alternate method filings that are accepted into the SCR. Once an electronic image has been

created and the accepted alternate method filing has been entered into the SCR, the original version of the accepted alternate method filing may be destroyed. The electronic image shall remain accessible for audit purposes.

R156-38b-506. Dates of Filings.

The official filing date of a particular filing shall be determined as follows:

(1) In the case of an electronic filing, it shall be the date the SCR accepts a filing input by the person making the filing and makes available a payment receipt to the person making the filing.

(2) In the case of an alternate method filing, it shall be the date upon which the designated agent received a filing that was ultimately accepted into the SCR including content requirements and payment.

R156-38b-507. Status of and Process for Filings Not Accepted by the SCR.

(1) A filing that is not accepted by the SCR shall not be considered to be filed.

(2) The SCR shall electronically indicate to a person whose electronic filing is not accepted that the filing is not accepted and the reason or reasons why it is not accepted. The SCR shall allow the person making the electronic filing attempt to correct the defect or defects, if possible.

(3) The designated agent shall notify a person whose alternate method filing is not accepted that the filing is not accepted and the reason or reasons why it is not accepted. The designated agent shall allow the person making the alternate filing to correct the defect or defects.

(4) A fee payment received with a filing submitted by alternate process that is not accepted shall be retained by the designated agent as the processing fee for handling the incomplete filing.

(5) For auditing purposes, the SCR shall maintain a record of all processing fees received with filings submitted by alternate process that are not accepted.

R156-38b-508. Correction of Filings.

(1) A person who submits a filing may submit a correction of the filing electronically or by alternate filing.

(2) A correction of filing shall not require a new fee payment unless submitted by alternate process or by a method of electronic process that requires manual input by the designated agent.

(3) A correction of filing shall not affect the date of filing for the filing being corrected. The date of filing for the correction of filing shall be as specified in Section R156-38b-506.

(4) Notification of the correction of filing shall be provided to the same persons as required for the filing being corrected.

R156-38b-509. Cancellation of Filings.

(1) In accordance with Subsections 38-1-32(3) and 38-1-33(2), the SCR shall, upon request of a person who filed an accepted preliminary notice or notice of completion, allow:

(i) a person who completed a filing who electronically requests cancellation of the filing to designate the filing as canceled; and

(ii) a person who completed a filing who by alternate process requests cancellation of the filing to have the filing placed in a canceled by the designated agent.

(2) Notification of the cancellation of a filing shall be provided to the same persons as required for the original successful filing.

(3) A canceled filing shall indicate that the filing is no longer given effect.

(4) A canceled filing may not be restored, but must be filed as a new filing in accordance with Sections 38-1-32 or 38-1-33.

R156-38b-510. Data Contained in the SCR.

The SCR is intended as a public repository of the information contained in the filings required or permitted by law. The SCR has the responsibility to post but not validate the accuracy, suitability or coherence of the information received in filings included within the SCR.

R156-38b-601. Fee Payment Methods.

(1) Pay-as-you-go Account. Payments may be made online by a credit card transaction in the amount established by the Division in collaboration with the designated agent. For alternate method filings, users will have the option of sending in a check or credit card information with their filing.

(2) Monthly Accounts. Payments may be made by a monthly account as specified by the Division in collaboration with the designated agent, as follows:

(i) an account in which the designated agent charges monthly fees to a credit card or bank account designated and authorized by the registered user; or

(ii) an account, guaranteed by a credit card, in which the designated agent sends a monthly invoice to be paid by the registered user within 30 days.

R156-38b-602. Transaction Receipts.

(1) In accordance with Subsection 38-1-27(2)(g), the SCR shall make available a transaction receipt upon acceptance of a filing into the SCR. The receipt shall indicate:

(a) the amount of any fee payment being processed;

(b) that the filing is accepted by the SCR;

(c) the date and time of the filing's acceptance; and

(d) the content of the accepted filing.

(2) It shall be the responsibility of the person making an electronic filing to print out a transaction receipt, if the person wishes a hard copy of the receipt.

(3) The designated agent shall send a transaction receipt to a person who submits a filing by alternate method that is accepted.

R156-38b-603. Fee Payment Accounting.

The designated agent shall be responsible for keeping accurate records to account for all fee payments, including filing fee payments and registration payments for access to SCR data. The designated agent shall make its accounting records available to the Division upon notification for auditing purposes.

R156-38b-604. Fee Payment Collection.

The designated agent shall be responsible for conducting or contracting for all fee payment collection activities and shall document or require to be documented such activities. The designated agent shall make its collection activity records available to the Division upon notification, for auditing purposes.

R156-38b-701. Indexing of State Construction Registry.

The SCR shall be indexed in accordance with Subsection 38-1-27(3)(b).

R156-38b-702. Archiving Requirements.

(1) In accordance with Subsection 38-1-30(4)(a), the designated agent shall archive the SCR computer data files semi-annually for auditing purposes.

(2) In accordance with Subsection 38-1-30(4)(c), filings shall be archived as follows:

(a) one year after the day on which a notice of completion is accepted into the SCR;

(b) if no notice of completion is filed, two years after the last filing activity for a project; or

(c) one year after the day on which a filing is canceled under Subsection 38-1-32(3)(c) or 38-1-33(2)(c).

(3) For purposes of this section, "archive" means to preserve an original or a copy of computer data files and filings separate from the active SCR.

(4) The designated agent shall maintain a transaction log of archived filings and make it available to the Division upon request for auditing purposes.

R156-38b-703. SCR Record Classification.

With the exception of any data that is subclassified as a private record, the SCR shall be classified by the Division under Title 63, Chapter 2, Government Records Access and Management Act (GRAMA), as a public record series.

R156-38b-704. Registered User Access to SCR Data.

In accordance with Subsections 38-1-27(2) and (3), and 38-1-30(3), construction projects in the SCR shall be accessible to an interested person who has registered with the SCR and has been assigned a unique user ID and password to gain access to the SCR.

R156-38b-705. Public Access to SCR Data.

Requests for public access to SCR data shall be handled in accordance with Subsection 38-1-27(5).

KEY: electronic preliminary lien filing, notice of commencement, preliminary notice, notice of completion 2005

38-1-30(3)



Health, Health Care Financing, Coverage and Reimbursement Policy

R414-14

Home Health Service

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27733

FILED: 02/28/2005, 12:06

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As required by recent legislation found in Subsection 26-18-3(2)(a), this rulemaking is necessary to implement by rule the home health services program that was previously implemented by policy.

SUMMARY OF THE RULE OR CHANGE: Section R414-14-0 is renumbered to Section R414-14-1. Also, the words "homebound" or "semi-homebound" are replaced by "eligible" to describe persons who are eligible for home health services.

This section also adds language that specifies that these services are provided only when the home is the most appropriate and cost effective setting that is consistent with the client's medical need. In addition, this section states the goals of home health care, which are to minimize the effects of disability, maintain health, and prevent inappropriate institutionalization. The state and federal citations that govern this rulemaking are also included. The old Section R414-14-1 is deleted. In Section R414-14-2, the definition of "Home Health Visit" is deleted. In Section R414-14-3, the title is changed from "Eligibility Requirements/Coverage" to "Client Eligibility Requirements". In Section R414-14-4, language is added that describes the "plan of care" criteria for home health services. In Section R414-14-5, the term "semi-homebound" is removed in reference to supportive maintenance home health care. Also, "plan of care" text is deleted because part of the text already exists in Section R414-14-4. Other "plan of care" text is deleted from Section R414-14-5 and now included in Section R414-14-4. Further, text deleted from Section R414-14-7 is added to Section R414-14-5. Finally, language is added in Subsections R414-14-5(9), (11), and (15) that specifies the limitations of supportive maintenance home health care, makes clear that only one home health provider (agency) is approved to provide service to a patient during any period of time, states that a subcontractor may provide service as long as the original agency bills for services, denies a second provider or agency approval of service, and makes an exception for children to receive occupational therapy who are covered under Child Health Evaluation Care (CHEC) for medically necessary services. Sections R414-14-6, R414-14-7, and R414-14-8 are deleted. Section R414-14-9 is renumbered to R414-14-6.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-3, and 42 CFR 440.70

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no impact to the state budget associated with this rulemaking because the policy for service determinations is simply being implemented in rule pursuant to recent legislation found in Subsection 26-18-3(2)(a).

❖ LOCAL GOVERNMENTS: There is no budget impact to local governments as a result of this rulemaking because the policy for service determinations is simply being implemented in rule pursuant to recent legislation found in Subsection 26-18-3(2)(a).

❖ OTHER PERSONS: There is no budget impact to other persons as a result of this rulemaking because the policy for service determinations is simply being implemented in rule pursuant to recent legislation found in Subsection 26-18-3(2)(a).

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because the policy for service determinations is simply being implemented in rule pursuant to recent legislation found in Subsection 26-18-3(2)(a).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Health and providers favor this rulemaking because home health is a growing service area and this rule removes restrictive definitions, clarifies eligibility for service, clarifies program goals, and emphasizes medical necessity and appropriateness as the basis for approval of service. No fiscal impact because this rule mirrors current policy on this program area. David N. Sundwall, MD

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@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 04/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2005

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-14. Home Health Service.

R414-14-~~0~~1. ~~Policy Statement~~ Introduction and Authority.

~~[A.]1. Home health services are part-time intermittent health care services that are based on medical necessity and provided to homebound or semi-homebound eligible persons in their permanent places of residence as an alternative to institutional care when the home is the most appropriate and cost effective setting that is consistent with the client's medical need. The goals of home health care are to minimize the effects of disability or pain; promote, maintain, or protect health; and prevent premature or inappropriate institutionalization. Home health services are provided by a public or private state licensed, Medicare certified home health agency. Home health services are based on physician order and plan of care.~~

~~[B. A hospital, skilled nursing facility, or intermediate care facility does not qualify as a person's place of residence for the purpose of receiving home health service.]2. This rule is authorized under Utah Code 26-18-3 and governs the services allowed under 42 CFR 440.70.~~

[R414-14-1. Authority and Purpose.

~~A. Authority~~

~~1. Home health service is a required Medicaid, Title XIX program authorized by Section 1901 et seq., of the Social Security~~

~~Act, Section 1905(a)(7) of the Social Security Act and 42 CFR 440.70.~~

~~2. This rule is also authorized by Utah Code Annotated Sections 26-1-4.1, 26-1-5, and 26-18-3.~~

~~B. Purpose~~

~~The purpose of home health care is to provide skilled or supportive care to patients in their place of residence as an alternative to premature or inappropriate institutionalization. Home health care must minimize the effects of disability or pain and promote, maintain, or protect health while allowing individuals to live at home in personal dignity and independence.~~

[R414-14-2. Definitions.

~~[A.]1. "Home health agency" means a public agency or private organization which that is licensed by the Bureau of Health Facility Licensure Department as a home health agency under the authority of Utah Code Annotated, Title 26, Chapter 21, and in accordance with Utah Administrative Code 1989, R432-700. A home health agency is primarily engaged in providing skilled nursing service and other therapeutic services.~~

~~B. "Home Health Visit" means a personal contact in the place of residence of a patient made for the purpose of providing a covered service by appropriate personnel under the supervision of a home health agency.~~

~~[C.]2. "Plan of Care" means a written plan developed cooperatively by home health agency staff and the attending physician. The plan is designed to meet specific needs of an individual, is based on orders written by the attending physician, and is approved and periodically reviewed and updated by the attending physician.~~

~~[D.]3. "Prior authorization" means that degree of approval for payment of services required to be obtained from Division of Health Care Financing staff by a licensed provider before the service is provided.~~

R414-14-3. Client Eligibility Requirements/Coverage.

Home health services are available to categorically eligible and medically needy individuals.

R414-14-4. Program Access Requirements.

~~[A.]1. Home health service shall be provided only to an individual who is under the care of a physician. The attending physician shall write the orders on which a plan of care is established and certify the necessity for home health services.~~

~~[B.]2. The home health agency shall may accept a recipient for home health care only if there is basis of a reasonable expectation that a recipient's needs can be met adequately by the agency in the recipient's place of residence.~~

~~3. The attending physician and home health agency personnel must review and sign a total plan of care shall as often as the severity of the patient's condition requires, but at least once every 60 days in accordance with 42 CFR 440.70.~~

~~4. The home health agency must provide quality, cost-effective care and a safe environment in the home through registered or licensed practical nurses who have adequate training, knowledge, judgement, and skill.~~

~~5. Home health aide services may only be provided pursuant to written instructions and under the supervision of a registered nurse by a person selected and trained to assist with routine care not requiring specialized nursing skills.~~

6. Over the long term service period, the cost to provide the required care and service in the patient's home must be no greater than the cost to meet the client's medical needs in an alternative setting.

7. A home health agency may provide an initial assessment visit without prior authorization to assess the patient's needs and establish a plan of care. After the initial visit, all home health care and service must be based on prior authorization.

R414-14-5. Service Coverage.

~~[A. Home health service shall be provided to a patient who is under the care of a physician who certifies the necessity for home health service and writes orders on which a plan of care can be developed.~~

~~— B. The total plan of care shall be reviewed and signed by the attending physician and home health agency personnel as often as the severity of the patient's condition requires, but at least once every 60 days in accordance with 42 CFR 440.70.~~

~~— C]1. Two levels of home health service are covered: Skilled Home Health Care and Supportive Maintenance Home Health Care.~~

~~[D]2. Skilled nursing service encompasses the expert application of nursing theory, practice and techniques by a registered professional nurse to meet the needs of patients in their place of residence through professional judgments, through independently solving patient care problems, and through application of standardized procedures and medically delegated techniques.~~

~~[E]3. Home health aide service encompasses assistance with, or direct provision of, routine care not requiring specialized nursing skill. The home health aide is closely supervised by a registered, professional nurse to assure competent care. The aide works under written instructions [for care to be provided] and provides necessary care for the patient.~~

~~[F]4. Supportive maintenance home health care serves those patients [who are semi-homebound,] who have a medical condition which has stabilized, but who demonstrate continuing health problems requiring minimal assistance, observation, teaching, or follow-up. This assistance can be provided by a certified home health agency through the knowledge and skill of a licensed practical nurse (LPN) or a home health aide with periodic supervision by a registered nurse. A physician continues to provide direction.~~

~~[G]5. IV therapy, enteral and parenteral nutrition therapy are provided as a home health service either in conjunction with skilled or maintenance care or as the only service to be provided. Specific policy is outlined in the medical supplies program[;] and all requirements of the home health program must be met in relation to orders, plan of care, and 60 day review and recertification.~~

~~[H]6. [Therapy services: p] Physical therapy and speech pathology services are occasionally indicated and approved for the patient needing home health service. Any therapy services offered by the home health agency directly or under arrangement must be ordered by a physician and provided by a qualified licensed therapist in accordance with the plan of care.~~

~~[I]7. Medical supplies utilized for home health service must be suitable for use in the home in providing home health care, consistent with physician orders, and approved as part of the plan of care.~~

8. Medical supplies provided by the home health agency do not require prior approval, but are limited to:

(a) supplies used during the initial visit to establish the plan of care;

(b) supplies that are consistent with the plan of care; and

(c) non-durable medical equipment.

9. Supportive maintenance home health care is limited in time equal to one visit per day determined by care needs and care giver participation.

10. A registered nurse employed by an approved, certified home health agency must supervise all home health services. Nursing service and all approved therapy services must be provided by the appropriate licensed professional.

11. Only one home health provider (agency) may provide service to a patient during any period of time. However, a subcontractor of a home health provider may provide service if the original agency is the only provider that bills for services. A second provider or agency requesting approval of service will be denied.

12. Home health care provided to a patient capable of self care is not a covered Medicaid benefit.

13. Personal care services, except as determined necessary in providing skilled care, is not a covered home health benefit.

14. Housekeeping or homemaking services are not covered home health benefits.

15. Occupational therapy is not a covered Medicaid benefit except for children covered under CHEC for medically necessary service.

16. Home health nursing service beyond the initial evaluation visit requires prior authorization.

17. All home health service beyond the initial visit, including supplies and therapies, shall be in the plan of care that the home health agency submits for prior authorization. Prior to providing the service, the home health agency must first obtain approval for the level of skilled or maintenance service based on the prior authorization request and a review of the plan of care. If level of service needs change, the home health agency must submit a new prior authorization request.

18. A home health agency may provide therapy services only in accordance with medical necessity and after receiving prior authorization.

~~[R414-14-6. Standards of Care.~~

~~— A. Home health service shall be provided in accordance with 42 CFR 440.70, which is hereby adopted and incorporated by reference.~~

~~— B. Quality, cost effective care and a safe environment in the home shall be provided through adequate training, knowledge, judgement, and skill of the registered nurse or licensed practical nurse licensed in the State of Utah in accordance with Title 58, Chapter 31 Utah Code Annotated.~~

~~— C. Home health aide services shall be provided through written instructions and under the supervision of a registered professional nurse by a person selected and trained to assist with routine care not requiring specialized nursing skills.~~

R414-14-7. Limitations:

~~— A. Home health service must be cost effective. It must cost less, over the long term service period, to provide the required care and service in the patient's home than it would cost to meet the medical needs in an alternative setting.~~

~~— B. Home health service must be based on physician orders and a plan of care reviewed and recertified every 60 days, or more frequently if patient condition indicates.~~

~~— C. An initial assessment visit may be provided without prior authorization to assess the patient's needs and establish the plan of~~

care. After the initial visit, all home health care and service must be based on prior authorization.

~~— D. Medical supplies provided by the home health agency do not require prior approval, but are limited to:~~

~~— 1. Supplies used during the initial visit to establish the plan of care.~~

~~— 2. Supplies that are consistent with the plan of care.~~

~~— 3. Non-durable equipment.~~

~~— E. Supportive maintenance home health care is limited to one visit per day.~~

~~— F. All home health service must be supervised by a registered nurse employed by an approved, certified home health agency. Nursing service and all approved therapy services must be provided by the appropriate licensed professional.~~

~~— G. Home health care provided to a patient capable of self care is not a covered Medicaid benefit.~~

~~— H. Personal care services, except as determined necessary in providing skilled care, is not a covered home health benefit.~~

~~— I. Housekeeping or homemaking services are not covered home health benefits.~~

~~— J. Occupational therapy is not a covered Medicaid benefit.~~

~~R414-14-8. Prior Authorization.~~

~~— A. Home health nursing service beyond the initial evaluation visit requires prior authorization.~~

~~— B. All home health service beyond the initial visit, including supplies and therapies, shall be specified in the plan of care submitted for prior authorization by the home health agency selected by the patient to provide the service. The level of service, e.g., skilled or maintenance service, will be established and approved based on the prior authorization request. When level of service needs change, a new prior authorization request must be submitted.~~

~~— C. Therapy services shall be supported by medical need and by prior authorization before any service is provided.~~

~~[R414-14-9]6. Reimbursement for Services.~~

~~Reimbursement for home health services shall be provided as documented in the Utah State Medicaid Plan, ATTACHMENT 4.19-B.~~

~~The fee schedule was established after examining usual and customary charges in the industry, applying appropriate discounts, and relying on professional judgment.~~

KEY: ~~M~~medicaid

~~1989~~2005

Notice of Continuation October 6, 2004

~~26-14.1~~

26-1-5

26-18-3



Health, Health Systems Improvement,
Licensing
R432-100-4
Hospital Swing-Bed and Transitional
Care Units

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27731

FILED: 02/28/2005, 11:26

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change will allow transitional care units in hospitals with 16 or fewer beds to license as small health care facilities.

SUMMARY OF THE RULE OR CHANGE: Subsection R432-100-4(2) is amended to add language allowing transitional care units in hospitals with 16 or fewer beds to license as small health care facilities.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-21-5

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There will be \$375 in additional fee revenue collected as a result of these facilities relicensing as small health care facilities.

❖ **LOCAL GOVERNMENTS:** Local governments do not operate transitional care units and will not be impacted by this rule change.

❖ **OTHER PERSONS:** \$375 in additional fees will be collected as a result of five facilities relicensing as small health care facilities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Each facility will be charged \$75 to relicense.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Facilities have requested this change in licensing to reflect that they are not long-term nursing care facilities. Fiscal impact will be minimal. David N. Sundwall, MD

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT, LICENSING
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:

Allan Elkins at the above address, by phone at 801-538-6595, by FAX at 801-538-6163, or by Internet E-mail at aelkins@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 04/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2005

AUTHORIZED BY: David N. Sundwall, Executive Director

R432. Health, Health Systems Improvement, Licensing.
R432-100. General Hospital Standards.
R432-100-4. Hospital Swing-Bed and Transitional Care Units.

Hospitals with designated swing bed units or transitional care units shall comply with this section.

(1) In addition to R432-100, designated hospital swing beds shall comply with the following sections of R432-150, Nursing Care Facility Rules: 150-4, 150-5, 150-11 through 150-17, 150-20, 150-22, and 150-24.

(2) Transitional Care Units having 16 or fewer licensed beds shall be licensed as Small Health Care Facilities under a separate licensing category and shall conform to the requirements of R432-200, Small Health Care Facility. All other Transitional Care Units shall be licensed as Nursing Care Facilities under a separate licensing category and shall conform to the requirements of R432-150, Nursing Care Facility Rules. Licenses for Transitional Care Units having 16 or fewer beds as Small Health Care Facilities may be issued retrospectively to January 1, 2005 at the discretion of the Department.

KEY: health facilities
~~November 10, 2004~~2005
 Notice of Continuation October 16, 2002
 26-21-5
 26-21-2.1
 26-21-20



**Human Services, Services for People
 with Disabilities**
R539-4
Behavior Interventions

NOTICE OF PROPOSED RULE
 (New Rule)
 DAR FILE NO.: 27724
 FILED: 02/25/2005, 08:05

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is proposed after a comprehensive revision of the Division's Administrative Rules. The rule outlines requirements for the use of behavior interventions and the implementation of positive behavior support plans. A repeal of the current rule will be filed at a later date.

SUMMARY OF THE RULE OR CHANGE: The rule defines the standards for the use of behavior interventions and divides them into three levels. Changes also include requirements for the content in behavior support plans, staff training and implementation of the plans, prohibited procedures, and review and approval responsibilities for the Provider Peer Review and State Behavior Review Committees. Requirements regarding the use of emergency behavior interventions are also included.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-5-102 and 62A-5-103

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The implementation of the State Behavior Review Committee will not require additional funds as the Division will employ volunteer members. Small costs to provide stipends to the independent professional member will be covered by reprioritizing state administrative activities within the existing budget. Cost will be approximately \$60 per monthly meeting, plus mileage.
- ❖ LOCAL GOVERNMENTS: No local government funding is used. Therefore, there is no cost to local governments.
- ❖ OTHER PERSONS: Service Providers currently conduct Behavior Peer Reviews and these activities are considered part of the rate paid to Providers. However, persons in services may lose rights as a condition to receiving effective treatment and continuing services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Service Providers currently conduct Behavior Peer Reviews and these activities are considered part of the rate paid to Providers. Due to the professional judgement of service providers in implementing a behavior support plan, a person in services may lose rights as a condition to receiving effective treatment and continuing services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule does not reflect a change in methodology within the Division and the Division's expectations of Service Providers. No fiscal impacts are identified. Lisa-Michele Church, Executive Director.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN SERVICES
 SERVICES FOR PEOPLE WITH DISABILITIES
 Room 411
 120 N 200 W
 SALT LAKE CITY UT 84103-1500, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Suzie Totten at the above address, by phone at 801-538-4197, by FAX at 801-538-4279, or by Internet E-mail at stotten@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 04/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2005

AUTHORIZED BY: Lisa-Michele Church, Executive Director

R539. Human Services, Services for People with Disabilities.
R539-4. Behavior Interventions.
R539-4-1. Purpose.

(1) The purpose of this rule is to define and establish standards for Behavior Interventions, to protect Persons' rights, and prevent abuse and neglect.

R539-4-2. Authority.

(1) This rule establishes procedures and standards for Persons' constitutional liberty interests as required by Subsection 62A-5-103(4)(b).

R539-4-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-3.

(2) In addition:

(a) "Behavior Intervention" means a specific technique designed to teach the Person skills and address their problems. Techniques are based on principles from the fields of Positive Behavior Supports and applied behavior analysis.

(b) "Behavior Peer Review Committee" means a group consisting of at least three specialists with experience in the fields of Positive Behavior Supports and applied behavior analysis. One of the three members must be outside the Provider agency. The Committee is primarily responsible for evaluating the quality, effectiveness, and least intrusiveness of the Person's Behavior Support Plan.

(c) "Behavior Support Plan" means a written document used by Provider staff and others, designed to address the Person's specific problems.

(d) "Contingent Rights Restrictions" means a Level III Intervention resulting in the temporary loss of rights based upon the occurrence of a previously identified problem.

(e) "Emergency Behavior Intervention" means the use of Level II Interventions not outlined in the Behavior Support Plan, but used in Emergency Situations.

(f) "Emergency Rights Restriction" means a Level II Intervention temporarily denying or restricting access to personal property, privacy, or travel in order to prevent imminent injury to the Person, others, or property. Rights are reinstated when immediate danger is resolved.

(g) "Emergency Situations" means one or more of the following:

(i) Danger to others: physical violence toward others with sufficient force to cause bodily harm.

(ii) Danger to self: abuse of self with sufficient force to cause bodily harm.

(iii) Danger to property: physical abuse or destruction of property.

(iv) Threatened abuse toward others, self, or property which, with an evidence of past threats, result in any of the items listed above.

(h) "Enforced Compliance" means a Level II Intervention in which a Person is physically guided through completion of a request or command that the Person is resisting.

(i) "Exclusionary Time-out" means a Level II Intervention removing the Person from a specific setting that exceeds 10 minutes or requires Enforced Compliance to move the Person to or prevent from leaving a designated area.

(j) "Extinction" means a Level I Intervention that withholds reinforcement from a previously reinforced behavior.

(k) "Functional Behavior Assessment" means a written document prepared by the Provider behavior specialist to determine why problems occur and develop effective interventions. The results of the assessment are a clear description of the problem, situations that predict when the problem will occur, consequences that maintain the problem, and a summary statement or hypothesis.

(l) "Highly Noxious Stimuli" means a Level III Intervention applying an extremely undesirable, but not harmful, sensory event that exceeds the criteria of Mildly Noxious Stimuli.

(m) "Level I Intervention" means positive, unregulated procedures such as prevention strategies, reinforcement strategies, positive teaching and training strategies, redirecting, verbal instruction, withholding reinforcement, Extinction, Non-exclusionary Time-out/Contingent Observation, and simple correction.

(n) "Level II Intervention" means intrusive procedures that may be used in pre-approved Behavior Support Plans or as Emergency Behavior Interventions. Approved interventions include Enforced Compliance, Manual Restraint, Exclusionary Time-out, Mildly Noxious Stimuli, and Emergency Rights Restrictions.

(o) "Level III Intervention" means intrusive procedures that are only used in pre-approved Behavior Support Plans. Approved interventions include Time-out rooms, Mechanical Restraint, Highly Noxious Stimuli, overcorrection, Contingent Rights Restrictions, Response Cost, and Satiation.

(p) "Manual Restraint" means a Level II Intervention using physical force in order to hold a Person to prevent or limit movement.

(q) "Mechanical Restraint" means a Level III Intervention that is any device attached or adjacent to the Person's body that cannot easily be removed by the Person and restricts freedom of movement. Mechanical restraint devices may include, but are not limited to, gloves, mittens, helmets, splints, and wrist and ankle restraints. For purposes of this Rule, Mechanical Restraints do not include:

(i) Safety devices used in typical situations such as seatbelts or sporting equipment.

(ii) Medically prescribed equipment used as positioning devices, during medical procedures, to promote healing, or to prevent injury related to a health condition (i.e. helmets used for Persons with severe seizures).

(r) "Mildly Noxious Stimuli" means a Level II Intervention applying a slightly undesirable sensory event such as a verbal startle or loud hand clap.

(s) "Non-exclusionary Time-out/Contingent Observation" means a Level I Intervention in which a Person voluntarily moves to a designated area for less than ten minutes for the purpose of regaining self-control or observing others demonstrating appropriate actions.

(t) "Positive Behavior Supports" means the use of Behavior Interventions that achieve socially important behavior change. The supports address the functionality of the problem and result in outcomes that are acceptable to the Person, the family, and the community. Supports focus on prevention and teaching replacement behavior.

(u) "Overcorrection" means a Level III Intervention requiring a Person to repeatedly restore an environment to its original condition or repeating an alternate behavior.

(v) "Reinforcer" means anything that occurs following a behavior that increases or strengthens that behavior.

(w) "Response Cost" means a Level III Intervention removing previously obtained rewards, such as tokens, points, or activities, upon the occurrence of a problem. Removal of personal property is not approved.

(x) "Satiation" means a Level III Intervention that presents an overabundance of a reinforcer to promote a reduction in the occurrence of the problem. Satiation is not used with Enforced Compliance.

(y) "State Behavior Review Committee" means a group of professionals with training and experience in Positive Behavior Supports and applied behavior analysis. The committee reviews and approves Behavior Support Plans to ensure the least intrusive and most effective interventions are used.

(z) "Time-out Room" means a Level III Intervention placing a Person in a specifically designed, unlocked room. The Person is prevented from leaving the room until pre-determined time or behavior criteria are met.

R539-4-4. Levels of Behavior Interventions.

(1) The remainder of this rule applies to all Division staff and Providers, but does not apply to employees hired for Self-Administered Services.

(2) All Behavior Support Plans shall be implemented only after the Person or Guardian gives consent and the Behavior Support Plan is approved by the Team.

(3) All Behavior Support Plans shall incorporate Positive Behavior Supports with the least intrusive, effective treatment designed to assist the Person in acquiring and maintaining skills, and preventing problems.

(4) Behavior Support Plans must:

(a) Be based on a Functional Behavior Assessment.

(b) Focus on prevention and teach replacement behaviors.

(c) Include planned responses to problems.

(d) Outline a data collection system for evaluating the effectiveness of the plan.

(5) All Provider staff involved in implementing procedures outlined in the Behavior Support Plan shall be trained and demonstrate competency prior to implementing the plan.

(a) Completion of training shall be documented by the Provider.

(b) The Behavior Support Plan shall be available to all staff involved in implementing or supervising the plan.

(6) Level I interventions may be used informally, in written support strategies, or in Behavior Support Plans without approval.

(7) Behavior Support Plans that only include Level I Interventions do not require approval or review by the Behavior Peer Review Committee or Provider Human Rights Committee.

(8) Level II Interventions may be used in pre-approved Behavior Support Plans or emergency situations.

(9) Level III Interventions may only be used in pre-approved Behavior Support Plans.

(10) Behavior Support Plans that utilize Level II or Level III Interventions shall be implemented only after Positive Behavior Supports, including Level I Interventions, are fully implemented and shown to be ineffective. A rationale on the necessity for the use of intrusive procedures shall be included in the Behavior Support Plan.

(11) Time-out Rooms shall be designed to protect Persons from hazardous conditions, including sharp corners and objects, uncovered light fixtures, and unprotected electrical outlets. The rooms shall have adequate lighting and ventilation.

(a) Doors to the Time-out Room may be held shut by Provider staff, but not locked at any time.

(b) Persons shall remain in Time-out Rooms no more than 2 hours per occurrence.

(c) Provider staff shall monitor Persons in a Time-out Room visually and auditorially on a continual basis. Staff shall document ongoing observation of the Person while in the Time-out Room at least every fifteen minutes.

(12) Time-out Rooms shall be used only upon the occurrence of problems previously identified in the Behavior Support Plan.

(a) Persons shall be placed in the Time-out Room immediately following a previously identified problem. Time delays are not allowed.

(b) Persons shall not be transported to another location for placement in a Time-out Room.

(c) Behavior Support Plans must outline specific release criteria that may include time and behavior components. Time asleep must count toward time-release criteria.

(13) Mechanical restraints shall ensure the Person's safety in breathing, circulation, and prevent skin irritation.

(a) Persons shall be placed in Mechanical Restraints immediately following the identified problem. Time delays are not allowed.

(b) Persons shall not be transported to another location for Mechanical Restraints.

(14) Mechanical Restraints shall be used only upon the occurrence of problems previously identified in the Behavior Support Plan.

(a) Behavior Support Plans must outline specific release criteria that may include time and behavior components. Time asleep must count toward time-release criteria. The plan shall also specify maximum time limits for single application and multiple use.

(b) Behavior Support Plans shall include specific requirements for monitoring the Person, before, during, and after application of the restraint to ensure health and safety.

(c) Provider staff shall document their observation of the Person as specified in the Behavior Support Plan.

(15) Manual restraints shall ensure the Person's safety in breathing and circulation. Manual restraint procedures are limited to the Mandt System (Mandt), the Professional Assault Response Training (PART), or Supports Options and Actions for Respect (SOAR) training programs. Procedures not outlined in the programs listed above may only be used if pre-approved by the State Behavior Review Committee.

(16) Behavior Support Plans that include Manual Restraints shall provide information on the method of restraint, release criteria, and time limitations on use.

R539-4-5. Review and Approval Process.

(1) The Behavior Peer Review Committee shall review and approve the Behavior Support Plan annually. The plan may be implemented prior to the Behavior Peer Review Committee's review; however the review and approval must be completed within 60 calendar days of implementation.

(2) The Behavior Peer Review Committee's review and approval process shall include the following:

(a) A confirmation that appropriate Positive Behavior Supports, including Level I Interventions, were fully implemented and revised as needed prior to the implementation of Level II or Level III Interventions.

(b) Ensure the technical adequacy of the Functional Behavior Assessment and Behavior Support Plan based on principles from the fields of Positive Behavior Supports and applied behavior analysis.

(c) Ensure plans are in place to attempt reducing the use of intrusive interventions.

(d) Ensure that staff training and plan implementation are adequate.

(3) The Provider Human Rights Committee shall approve Behavior Support Plans with Level II and Level III Interventions annually. Review and approval shall focus on rights issues, including consent and justification for the use of intrusive interventions.

(4) The State Behavior Review Committee must consist of at least three members, including representatives from the Division, Provider, and an independent professional having a recognized expertise in Positive Behavior Supports. The Committee shall review and approve the following:

(a) Behavior Support Plans that include Time-out Rooms, Mechanical Restraints or Highly Noxious Stimuli.

(b) Behavior Support Plans that include forms of Manual Restraint or Exclusionary Time-out used for long-term behavior change and not used in response to an emergency situation.

(c) Behavior Support Plans that include manual restraint not outlined in Mandt, PART or SOAR training programs.

(5) The Committee shall determine the time-frame for follow-up review.

(6) Behavior Support Plans shall be submitted to the Division's state office for temporary approval prior to implementation pending the State Behavior Review Committee's review of the plan.

(7) Families participating in Self-Administered Services may seek State Behavior Review Committee recommendations, if desired.

R539-4-6. Emergency Behavior Interventions.

(1) Emergency Behavior Interventions may be necessary to prevent clear and imminent threat of injury or property destruction during emergency situations.

(2) Level I Interventions shall be used first in emergency situations, if possible.

(3) The least intrusive Level II Interventions shall be used in emergency situations. The length of time in which the intervention is implemented shall be limited to the minimum amount of time required to resolve the immediate emergency situation.

(4) Each use of Emergency Behavior Interventions and a complete Emergency Behavior Intervention Review shall be documented by the Provider on Division Form 1-8 and forwarded to the Division, as outlined in the Provider's Service Contract with the Division.

(a) The Emergency Behavior Intervention Review shall be conducted by the Provider supervisor or specialist and staff involved with the Emergency Behavior Intervention. The review shall include the following:

(i) The circumstances leading up to and following the problem.

(ii) If the Emergency Behavior Intervention was justified.

(iii) Recommendations for how to prevent future occurrences, if applicable.

(5) The Person's Support Coordinator shall review Form 1-8 received from Providers and document the follow-up action.

(6) If Emergency Behavior Interventions are used three times, or for a total of 25 minutes, within 30 calendar days, the Team shall meet within ten business days of the date the above criteria are met to review the interventions and determine if:

(a) A Behavior Support Plan is needed;

(b) Level II or III Interventions are required in the Behavior Support Plan;

(c) Technical assistance is needed;

(d) Arrangements should be made with other agencies to prevent or respond to future crisis situations; or

(e) Other solutions can be identified to prevent future use of Emergency Behavior Interventions.

(7) The Provider's Human Rights Committee shall review each use of Emergency Behavior Interventions.

KEY: people with disabilities, behavior
2005

62A-5-102

62A-5-103

Insurance, Administration **R590-148-12** Applications, Enrollment and Replacement of Coverage

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27719

FILED: 02/18/2005, 12:54

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change corrects an inconsistency in the rule.

SUMMARY OF THE RULE OR CHANGE: There are two "Cautions" in Subsection R590-148-12(4). The first Caution describes wording in the application. It says that the company "may have the right" to deny benefits. The second Caution describes wording in the policy. It says the company "has the right" to deny benefits. The wording needs to be the same in both the application and the policy. It should read "has the right." This is the wording from the National Association of Insurance Commissioners' model regulation, which is the basis of this rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-22-1404

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This will create no additional revenue or expense to the state budget. No additional fees will be required nor will it impact the workload.

❖ LOCAL GOVERNMENTS: This rule only affects the relationship between the Insurance Department and their licensees. It will have no affect on local governments.

❖ OTHER PERSONS: The only possible change this could create that might have some fiscal impact would be if an insurer has to change the wording on their long term care applications used in Utah. This would be a very minor change. Its impact on the insured should be minor, if any at all.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only possible change this could create that might have some fiscal impact would be if an insurer has to change the wording on their long term care applications used in Utah. This would be a very minor change. Its impact on the insured should be minor, if any at all.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change should have little, if any, impact on the Utah businesses. D. Kent Michie, Insurance Commissioner

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 04/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2005

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-148. Long-Term Care Insurance Rule.

R590-148-12. Applications, Enrollment and Replacement of Coverage.

(1) All applications for long-term care insurance policies or certificates except those which are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

(2)(a) If an application for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed.

(b) If the medications listed in the application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate may not be rescinded for that condition.

(3) All applications shall clearly indicate the payment plan selected by the applicant.

(4) Except for policies or certificates which are guaranteed issue:

(a) the following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or certificate:

Caution: If your answers on this application are incorrect or untrue, (company) ~~may have~~ has the right to deny benefits or rescind your policy.

(b) the following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate at the time of delivery:

Caution: The issuance of this long-term care insurance (policy) (certificate) was based upon your responses to the questions on your application. A copy of your (application) (enrollment form) (is

enclosed) (was retained by you when you applied). If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: (insert address)

(5) Prior to issuance of a long-term care policy or certificate to an applicant age 80 or older, the insurer shall obtain one of the following:

- (a) a report of a physical examination;
- (b) an assessment of functional capacity;
- (c) an attending physician's statement; or
- (d) copies of medical records.

(6) A copy of the completed application or enrollment form, whichever is applicable, shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.

(7) Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent, except where the coverage is sold without an agent, containing these questions may be used. With regard to a replacement policy issued to a group, other than employee and labor union groups, the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced; provided, however, that the certificateholder has been notified of the replacement.

(a) Do you have another long-term care insurance policy or certificate in force, including health care service contract, health maintenance organization contract?

(b) Did you have another long-term care insurance policy or certificate in force during the last 12 months?

- (i) If so, with which company?
- (ii) If that policy lapsed, when did it lapse?
- (c) Are you covered by Medicaid?

(d) Do you intend to replace any of your medical or health insurance coverage with this policy/certificate?

(8) Agents shall list any other health insurance policies they have sold to the applicant.

(a) List policies sold which are still in force.

(b) List policies sold in the past five years which are no longer in force.

(9) Solicitations Other than Direct Response. Upon determining that a sale will involve replacement, an insurer; other than an insurer using direct response solicitation methods, or its agent; shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of this notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the manner detailed in Table I, Notice to Applicant Regarding Replacement of Individual Accident and Sickness or Long-Term Care Insurance.

(10) Direct Response Solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the manner detailed in Table II, Notice to Applicant Regarding Replacement of Accident and Sickness or Long-Term Care Insurance.

(11) Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured and policy number or address including zip code. The notice shall be made within five working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

(12) Life insurance policies and certificates that provide benefits for long-term care shall comply with this section if the policy being replaced is a long-term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of R590-93, Replacement of Life Insurance and Annuities. If a life insurance policy that provide benefits for long-term care is replaced by another such policy, the replacing insurer shall comply with both the long-term care and the life insurance replacement requirements.

(13) Electronic Enrollment for Group Policies:

(a) In the case of a group policy, any requirement that a signature of an insured be obtained by an agent or insurer shall be deemed satisfied if:

(i) the consent is obtained by telephonic or electronic enrollment by the group policyholder or insurer. A verification of enrollment information shall be provided to the enrollee;

(ii) the telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention and prompt retrieval of records; and

(iii) the telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the confidentiality of individually identifiable information and "privileged information" as defined by the Utah Government Records Access and Management Act, Section 63-2-101, is maintained.

(b) The insurer shall make available, upon request of the commissioner, records that will demonstrate the insurer's ability to confirm enrollment and coverage amounts.

KEY: insurance

[April 18, 2002]2005

Notice of Continuation August 14, 2002

31A-2-201

31A-22-1404

Insurance, Administration

R590-226-3

Documents Incorporated by Reference

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27716

FILED: 02/18/2005, 11:13

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to update the dates of documents incorporated by reference in the rule.

SUMMARY OF THE RULE OR CHANGE: The edition dates of two documents in Section R590-226-3 need to be updated to show the new revision date of 2005.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-2-202

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: The NAIC Life, Accident and Health, Annuity, Credit Transmittal Document, January 1, 2005, edition; and the NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix, January 1, 2005, edition

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This change will have no impact on the state budget nor on the work of the Insurance Department. No additional filing fees will be received by the department and no increase or decrease in the workload will be created.

❖ LOCAL GOVERNMENTS: The changes to this rule will have no impact on local government since the rule only deals with the relationship between life insurers licensed to do business in Utah and the Utah insurance Department.

❖ OTHER PERSONS: This change will have no fiscal impact on life insurers doing business in Utah. They have already had input on the changes made to the two forms and are already using the forms. The new forms are downloaded by insurers from the National Association of Insurance Commissioners (NAIC) website so they don't have to re-create the forms themselves. These forms are used to file a company's rates and forms with the state insurance department and have no impact on an insured's coverage. As a result, there will be no financial impact on the consumer.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This change will have no fiscal impact on life insurers doing business in Utah.

They have already had input on the changes made to the two forms and are already using the forms. The new forms are downloaded by insurers from the NAIC website so they don't have to re-create the forms themselves. These forms are used to file a company's rates and forms with the state insurance department and have no impact on an insured's coverage. As a result, there will be no financial impact on the consumer.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes will have no fiscal impact on Utah businesses. D. Kent Michie, Insurance Commissioner

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 04/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2005

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-226. Submission of Life Insurance Filings.

R590-226-3. Documents Incorporated by Reference.

(1) The department requires that the documents described in this rule must be used for all filings. Actual copies may be used or you may adapt them to your word processing system. If adapted, the content, size, font, and format must be similar.

(2) The following documents are hereby incorporated by reference and are available on the department's website, www.insurance.utah.gov.

(a) "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document," dated January 1, ~~2003~~2005.

(b) "NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix," dated January 1, ~~2003~~2005.

(c) "NAIC Instruction Sheet for Life, Accident and Health, Annuity, Credit Transmittal Document," dated January 1, 2003.

(d) "NAIC Instruction Sheet for Life, Accident and Health, Annuity, Credit Transmittal Document Form Filing Attachment," dated January 1, 2003.

(e) "Utah Life Filing Certification," dated January 1, 2004.

(f) "Utah Life, Annuity, Credit Life, and Credit Accident and Health Group Questionnaire," dated January 1, 2004.

(g) "Utah Life, Annuity, Credit Life, and Credit Accident and Health Request for Discretionary Group Authorization," dated January 1, 2004.

(h) "Utah Annual Life Insurance Illustration Certification Filing Checklist," dated January 1, 2004.

KEY: life insurance filings

~~April 8, 2004~~2005

31A-2-201

31A-2-201.1

31A-2-202



Insurance, Administration **R590-227-3** Incorporation by Reference

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27717

FILED: 02/18/2005, 11:51

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to update the dates of documents incorporated by reference in the rule.

SUMMARY OF THE RULE OR CHANGE: The edition dates of two documents in Section R590-227-3 need to be updated to show the new revision dates of 2005.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-2-202

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: The NAIC Life, Accident and Health, Annuity, Credit Transmittal Document, January 1, 2005, edition; and the NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix, January 1, 2005, edition

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This change will have no impact on the state budget nor on the workload of the Insurance Department. There will be no change in the fees received by the department and no change in the workload.

❖ LOCAL GOVERNMENTS: The changes to this rule will have no impact on local governments since the rule only deals with the relationship between life insurers licensed to do business in Utah and the Utah Insurance Department.

❖ OTHER PERSONS: This change will have no fiscal impact on life insurers doing business in Utah. They have already had input on the changes made to the two forms that have been revised and which they are already using. The new forms are downloaded by insurers from the National Association of Insurance Commissioners (NAIC) website for use when filing forms and rates with state insurance department. These forms have no impact on insureds and their coverage. As a result there will be no fiscal impact on the insurance consumer.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This change will have no fiscal impact on life insurers doing business in Utah. They have already had input on the changes made to the two forms that have been revised and which they are already using. The new forms are downloaded by insurers from the NAIC website for use when filing forms and rates with the state insurance department. These forms have no impact on insureds and their coverage. As a result there will be no fiscal impact on the insurance consumer.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes will have no fiscal impact on Utah businesses. D. Kent Michie, Insurance Commissioner

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 04/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2005

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-227. Submission of Annuity Filings.

R590-227-3. Incorporation by Reference.

(1) The department requires that documents described in this rule must be used for all filings. Actual copies may be used or you may adapt them to your word processing system. If adapted, the content, size, font, and format must be similar.

(2) The following documents are hereby incorporated by reference and are available at www.insurance.utah.gov.

(a) "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document," dated January 1, [2003]2005.

(b) "NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix," dated January 1, [2003]2005.

(c) "NAIC Instruction Sheet for Life, Accident and Health, Annuity, Credit Transmittal Document," dated January 1, 2003.

(d) "NAIC Instruction Sheet for Life, Accident and Health, Annuity, Credit Transmittal Document Form Filing Attachment," dated January 1, 2003.

(e) "Utah Annuity Filing Certification," dated May 1, 2004.

(f) "Utah Life, Annuity, Credit Life, and Credit Accident and Health Group Questionnaire," dated May 1, 2004.

(g) "Utah Life, Annuity, Credit Life, and Credit Accident and Health Request for Discretionary Group Authorization," dated May 1, 2004.

KEY: annuity insurance filings

[April 8, 2004]2005

31A-2-201

31A-2-201.1

31A-2-202



Insurance, Administration **R590-228-3** Documents Incorporated by Reference

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE No.: 27718

FILED: 02/18/2005, 12:15

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to update the dates of documents incorporated by reference in the rule.

SUMMARY OF THE RULE OR CHANGE: The edition dates of two documents in Section R590-228-3 need to be updated to show the new revision dates of 2005.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201, 31A-2-202, and 31A-22-807

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: The NAIC Life, Accident and Health Annuity, Credit Transmittal Document, January 1, 2005, edition; and the NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix, January 1, 2005, edition

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This change will have no impact on the states budget nor on the workload of the Insurance Department. There will be no change in the fees received by the department nor a change in the workload of the department.

❖ LOCAL GOVERNMENTS: The changes to this rule will have no impact on local government since the rule only deals with the relationship between life insurers licensed to do business in Utah and the Utah Insurance Department.

❖ OTHER PERSONS: These changes will have no fiscal impact on life insurers doing business in Utah. They have already had input on the changes made to the two forms and are already using the forms to file rates and forms with the department. The new forms are downloaded by insurers from the National Association of Insurance Commissioners (NAIC) website so there is no necessity for the insurer to redesign their forms or print them. Insureds are not impacted by these forms.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These changes will have no fiscal impact on life insurers doing business in Utah. They have already had input on the changes made to the two forms and are already using the forms to file rates and forms with the department. The new forms are downloaded by insurers from the NAIC website so there is no necessity for the insurer to redesign their forms or print them. Insureds are not impacted by these forms.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes will have no fiscal impact on Utah businesses. D. Kent Michie, Insurance Commissioner

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 04/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2005

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-228. Submission of Credit Life and Credit Accident and Health Insurance Form and Rate Filings.

R590-228-3. Documents Incorporated by Reference.

(1) The department requires that documents described in this rule must be used for all filings. Actual copies may be used or you may adapt them to your word processing system. If adapted, the content, size, font, and format must be similar.

(2) The following documents are hereby incorporated by reference and are available at www.insurance.utah.gov.

(a) "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document," dated January 1, ~~2003~~2005;

(b) "NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix," dated January 1, ~~2003~~2005;

(c) "NAIC Instruction Sheet for Life, Accident and Health, Annuity, Credit Transmittal Document," dated January 1, 2003;

(d) "NAIC Instruction Sheet for Life, Accident and Health, Annuity, Credit Transmittal Document Form Filing Attachment," dated January 1, 2003;

(e) "Utah Credit Life and Credit Accident and Health Filing Certification," dated January 1, 2004;

(f) "Utah Life, Annuity, Credit Life, and Credit Accident and Health Group Questionnaire," dated January 1, 2004;

(g) "Utah Annual Credit Life and Credit Accident and Health Insurance Filing Checklist," dated January 1, 2004.

KEY: credit insurance filings

~~April 8, 2004~~2005

31A-2-201

31A-2-201.1

31A-2-202

Natural Resources, Wildlife Resources

R657-12

Hunting and Fishing Accommodations for Disabled People

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27721

FILED: 02/22/2005, 09:55

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted for taking public input and reviewing the division's program for hunting and fishing accommodations for disabled people.

SUMMARY OF THE RULE OR CHANGE: Provisions are being added to this rule to provide accommodations or opportunity for

disabled people to obtain a certificate of registration to receive a general deer or general elk extension for general season deer and elk hunting. Clarification is being made to the limited entry season extension section to provide the criteria for which a disabled person may qualify for a certificate of registration. Other changes are being made for consistency and clarity.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18, 23-19-1, 23-19-36, 23-20-12, and 63-46a-3

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This amendment allows more accommodations or opportunity for disabled people to participate in general deer and elk hunting, and makes clarification. The Division of Wildlife (DWR) has determined that this amendment does not create a cost or savings impact to the division's budget or the state budget.

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

❖ OTHER PERSONS: This amendment allows more accommodations or opportunity for disabled people to participate in general deer and elk hunting, and makes clarification. The amendment does not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This amendment allows more accommodations or opportunity for disabled people to participate in general deer and elk hunting, and makes clarifications. There are no additional compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses. Mike Styler, DNR Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debbie Merrill at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiemerrill@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 04/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2005

AUTHORIZED BY: Miles Moretti, Acting Director

R657. Natural Resources, Wildlife Resources.

R657-12. Hunting and Fishing Accommodations for Disabled People.

R657-12-1. Purpose and Authority.

Under authority of Sections 23-14-18, 23-19-1, 23-19-36, 23-20-12 and 63-46a-3, this rule provides the standards and procedures for a disabled person to:

- (1) obtain a certificate of registration for taking wildlife from a vehicle;
- (2) obtain a fishing license as authorized under Section 23-19-36(1);
- (3) obtain a certificate of registration to participate in companion hunting;
- (4) obtain a certificate of registration to receive a limited entry season extension;
- ~~(5) obtain a certificate of registration to receive a general deer or elk season extension; or~~
- ~~(5)(6) obtain a certificate of registration to hunt with a crossbow.~~

R657-12-6. Special Season Extension for Disabled Persons - Limited Entry Hunts.

(1) A person may obtain a Certificate of Registration from a division office requesting an extension of 30 days for any limited entry hunt, provided the person requesting the extension:

(a) is blind, quadriplegic, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities;

(b) satisfies the hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains the appropriate license, permit, and tag.

(2) The division shall not issue a Certificate of Registration for a 30-day extension on any limited entry hunt where the extension will violate federal law.

(3) The division shall accept the following as evidence of disability:

- (a) obvious physical impediment;
- (b) use of any mobility device described in Section R657-12-2(b);
- (c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(a) or;
- (d) a signed statement by a licensed physician verifying the person is quadriplegic, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

R657-12-7. Special Season Extension for Disabled Persons - General Deer and Elk Hunts.

(1) A person may obtain a Certificate of Registration from a division office to hunt an extended general deer or elk season as provided in Subsection (2), provided the person requesting the extension:

(a) is blind, quadriplegic, paraplegic, or otherwise permanently disabled so as to be permanently confined to a

wheelchair or the use of crutches, or who has lost either or both lower extremities;

(b) satisfies the hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains the appropriate permit and tag.

(2)(a) The extended general deer season may occur five days prior to the general season deer hunt date published in the proclamation of the Wildlife Board for taking big game.

(b) The extended general spike bull elk season may occur five days after the general season spike bull elk hunt published in the proclamation of the Wildlife Board for taking big game.

(c) The extended general any bull elk season may occur concurrently with the general youth any bull elk hunt published in the proclamation of the Wildlife Board for taking big game.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(a); or

(d) a signed statement by a licensed physician verifying the person is quadriplegic, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

R657-12-8[~~R657-12-7~~]. Crossbows.

(1)(a) A person who has a permanent physical impairment due to injury or disease, congenital or acquired, which renders the person so severely disabled as to be unable to use conventional archery equipment may receive a certificate of registration to use a crossbow to hunt big game, cougar, bear, turkey, waterfowl or small game during the respective archery or any weapon hunting seasons as provided in the applicable proclamations of the Wildlife Board for taking protected wildlife.

(b) The division shall accept the following as evidence of eligibility to use a crossbow:

- (i) obvious physical disability, as provided in Subsection (1)(a), demonstrating the applicant is eligible to use a crossbow; or
- (ii) provides a physician's statement confirming the disability as defined in Subsection (1)(a).

(2)(a) Any crossbow used to hunt big game, cougar, bear, turkey, waterfowl or small game must have:

- (i) a stock that is at least 18 inches long;
 - (ii) a minimum draw weight of 125 pounds for big game, bear and cougar, or 60 pounds for turkey, waterfowl and small game;
 - (iii) a draw length that is at least 18 inches from the front of the crossbow to the back of the string in a cocked position; and
 - (iv) a positive safety mechanism.
- (b) Arrows or bolts used must be:
- (i) at least 18 inches long; and
 - (ii) must have a broadhead with two or more sharp cutting edges that cannot pass through a 7/8 inch ring for big game, cougar, bear or turkey.

(3) The following equipment or devices may not be used:

- (a) arrows with chemically treated or explosive arrowheads; or
- (b) a bow with an attached electronic range finding device or a magnifying aiming device.

(4) Arrows or bolts carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(5) A cocked crossbow may not be carried in or on a vehicle.

Notice of Continuation September 20, 2002
23-20-12
63-46a-3

KEY: wildlife, wildlife law, disabled persons
~~November 15, 2002~~ 2005



End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [example]). A row of dots in the text (.) indicates that unaffected text was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends April 14, 2005. At its option, the agency may hold public hearings.

From the end of the waiting period through July 13, 2005, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page.

Public Safety, Driver License
R708-40
Driving Simulators

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 27579

Filed: 02/25/2005, 10:43

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Based upon the feedback we have received on the proposed rule, more clarification is needed in terms that are more easily understood, as to what is required to provide a fully interactive driving simulator that simulates real world driving. Also, a better description of what constitutes a non-fully interactive driving simulator is needed.

SUMMARY OF THE RULE OR CHANGE: A definition section that defines what "Operator Interaction" and "Field of View" is added. Also rewrote and added subsections under the new Section R708-40-4. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the January 1, 2005, issue of the Utah State Bulletin, on page 31. Underlining in the rule below indicates text that has been added since the publication of the proposed new rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53-03-505(1)(d)(i)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There is no cost or savings to the state because of these changes. Driver training schools still have to meet the driver training requirement whether they use a simulator or not.
- ❖ LOCAL GOVERNMENTS: There still may be a cost to local government if the public schools choose to use driving simulators because they must meet the standards of this rule.
- ❖ OTHER PERSONS: The only cost to other persons, is for those schools that want to purchase a driving simulator and for those students who want to pay to be trained by a driving simulator. Whether this cost is higher than a regular driving training class is up to the schools. The current changes do not change this.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be a compliance cost, which has not changed, for driver training and public schools that want to get driving simulators because they need to meet these standards.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There may be costs to businesses, which has not changed, that choose to get a driving simulator because the simulators need to meet the standards of this rule. Robert L. Flowers, Commissioner

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

PUBLIC SAFETY
 DRIVER LICENSE
 CALVIN L RAMPTON COMPLEX
 4501 S 2700 W 3RD FL
 SALT LAKE CITY UT 84119-5595, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Vinn Roos at the above address, by phone at 801-965-4456, by FAX at 801-964-4482, or by Internet E-mail at vroos@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2005

AUTHORIZED BY: Judy Hamaker Mann, Director

R708. Public Safety, Driver License.

R708-40. Driving Simulators.

R708-40-1. Purpose.

The purpose of this rule is to define standards for ~~fully interactive~~ driving simulators for use in ~~conducting~~ conjunction with driver training.

R708-40-2. Authority.

This rule is authorized by Subsection 53-03-505(1)(d)(~~ii~~).

R708-40-3. Definitions.

In addition to terms defined in 53-3-102,

- (1) "Operator interaction" means a condition whereby a student driver operates simulation equipment that reacts and adjusts to the student's eye, hand, foot and operation.
- (2) "Field of view" means the ability to see to the right, left as well as the center of a persons visual perspective, such as a "panoramic visual field".

R708-40-~~3~~4. Standards for ~~[Fully Interactive]~~ Driving Simulators.

- (1) A fully interactive driving simulation device shall:
 - (a) [take in operator control inputs by use of equipment that is substantially the same in overall size, function and quality as an actual passenger vehicle, processes operator control inputs with a high fidelity dynamic model and displays the resulting vehicle state in a manner that is substantially the same as that which would occur in an actual passenger vehicle] provide for operator interaction by use of equipment that is substantially the same in overall physical size, function and construction characteristics as the controls and seating mechanisms found in an actual passenger motor vehicle;
 - (b) [be capable of maintaining at least a 60 Hz visual refresh rate in a fully populated, dynamic driving scenario and a smooth visual scene that dynamically changes in response to operator/instructor inputs that approximate the out the window experience and enables realistic training of vehicle control, situational awareness, rules of the road and emergency

response]visually display the resulting vehicle positioning and effect of individualized operator interaction relative to the simulated visual and aural scenario in a manner that is substantially similar to typical conditions found in an actual passenger motor vehicle;

(c) [provide active steering force feedback]be capable of maintaining a visual scene that changes in response to operator or instructor movements, and approximates a field of view that a student would experience if seated in the driver seat of an actual passenger motor vehicle;

(d) present a field of view that enables[minimum of 150 degrees forward field of view (FOV)as to enable] the operator to observe a driving condition of that operator's driving[come to] into an intersection and visually [scan]scanning both directions of traffic with proper head movements;

(e) present other vehicles in a simulated visual scenarios[include scenario vehicles] that can be readily perceived as behaving in a manner consistent with real-world driving experience[so as to enable training on situational awareness, vehicle handling in traffic and emergency response];

(f) [support real time driving performance monitoring, presentation of feedback and storage of training performance data; and]enable a student to physically respond to simulated visual scenarios in the areas of vehicle control, awareness, and general-rules-of -the-road which are listed in the Utah Driver Handbook. These include: signaling, proper use of lanes, turning, lane changes, overtaking and passing, right of way, response to emergency vehicles, allowances for pedestrians, stopping, parking, navigating a vehicle through highway work zones, traffic signs, signals and road markings, and pavement markings;

(g) [simulate Utah driving conditions and environment.]provide an active physically felt, steering-wheel resistance as feedback to the student, that is similar to conditions typically experienced while operating an actual passenger motor vehicle;

(h) provide an instructor with information drawn from monitoring, assessment, feedback and storage of training performance data; and which

(i) imitate and model Utah driving conditions and environment.

(2) [A driving simulator that does not conform to characteristics as outlined in Section R708-40-3 is not considered by the division to be a fully interactive driving simulator.]A non-fully interactive driving simulation device shall conform to the above description of a full interactive driving simulation device, except that it does not present a student with a panoramic "side and front" field of view, is used by two or more students, or does not provide an individual student's performance information as feedback to the student.

(3) A driving simulator that does not conform to the characteristics as outlined in Section R708-40-4(1) above, is not acceptable as a fully interactive driving simulator in a driver education program as in accordance with Section 53-3-505.5(2)(b).

(4) A driving simulator that does not conform to the characteristics as outlined in Section R708-40-4(2) above, is not acceptable as a non-fully interactive driving simulator in a driver education program as in accordance with Section 53-3-505.5(2)(c).

KEY: driving simulators

2005

53-3-505



**Public Service Commission,
Administration
R746-345
Pole Attachments of Public Utility
Companies**

**NOTICE OF CHANGE IN PROPOSED RULE
(Second)**

DAR File No.: 27348
Filed: 02/28/2005, 15:18

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change in proposed rule incorporates comments and suggestions made by commentors in the most recent round of comments to the Commission after the change in proposed rule.

SUMMARY OF THE RULE OR CHANGE: This change clarifies definitions, clarifies the calculation of the rental charge, and clarifies that basis for the rental charge. (DAR NOTE: This is the second change in proposed rule (CPR) for Rule R746-345. The original proposed repeal and reenact upon which the first CPR was based was published in September 1, 2004, issue of the Utah State Bulletin, on page 29. The first CPR upon which this second CPR is based was published in the November 1, 2004, issue of the Utah State Bulletin, on page 34. Underlining in the rule below indicates text that has been added since the publication of the change in proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the first CPR, the second CPR, and the proposed repeal and reenact together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 54-3-1, 54-4-1, and 54-4-13; and 47 U.S.C. 224(c)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** None--State agency activity in relation to pole attachment activities will stay the same.
- ❖ **LOCAL GOVERNMENTS:** None--Local government activities are not affected by this rule. Therefore, there are no cost or savings to local government.
- ❖ **OTHER PERSONS:** Undeterminable--To the extent that rates set in the rule are lower than those previously charged, revenue reductions will occur for those entities which previously charged the higher rate; this will be offset by a reduction in costs or expenses of those entities who previously paid the higher rate. A concomitant change will occur in situations where the rule sets a rate higher than that previously charged. These changes in revenues and expenses may be considered by the Commission when establishing other rates for the public utilities subject to the Commission's jurisdiction. The magnitude of the changes will also be subject to the number of attachments which are affected and in existence. There is significant dispute

between pole attachment parties on the number of pole attachments which they have among themselves. Inventory is still occurring and disputes are still pending before the Commission.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Offsetting increases and decreases will occur. Some entities will see a reduction in revenues they receive from attaching entities, but will also see a reduction in their own expenses for the attachment costs they incur for their own attachments with other pole owning entities. To the extent permitted by law, the Commission intends to consider the net effect of such changes when establishing rates for utilities operating within the Commission's jurisdiction.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Through state and federal law, the Commission regulates the terms by which attachments are made to the poles of utilities operating in Utah. Changes in the utility industry, increasing reliance upon and access demands for use of available attachment space, and the increasing magnitude of disputes concerning the entire attachment process have prompted the Commission to reexamine, with industry participation, a wide spectrum of issues relating to pole attachments. As is often the case for the Commission, promulgation of the rule requires balancing interests of various parties. The Commission has crafted a rule which it believes is consistent with both state and federal law and sets terms which are conducive to the public interest and well being of the State of Utah and its citizens generally. Where permitted by law, the Commission will consider the specific fiscal impact, whether up or down, the rule will have on the operations of an individual public utility operating in Utah and subject to the Commission's ratemaking authority. Ric Campbell, Chairman

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 04/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2005

AUTHORIZED BY: Barbara Stroud, Paralegal

R746. Public Service Commission, Administration.

R746-345. Pole Attachments of Public Utility Companies.

R746-345-1. Authorization.

A. Authorization of Rules -- Consistent with the Pole Attachment Act, 47 U.S.C. 224(c), and Utah Code Annotated 54-3-1, 54-4-1, 54-4-4 and 54-4-13, the Public Service Commission shall have the power to regulate the rates, terms, and conditions by which a public utility, as defined in Utah Code Annotated 54-2-1(15)(a) including telephone corporations as defined in 54-2-23(a), can permit attachments to its poles by an~~[y other public utility, wireless provider, cable television company, or other]~~ attaching entity.

B. Application of Rules -- These rules shall apply to each public utility that permits attachments to its poles by an~~[y other public utility, wireless provider, cable television company or other]~~ attaching entity.

1. Although specifically excluded from regulation by the Commission in Utah Code Annotated 54-2-1(23)(b), solely for the purpose of any pole attachment, these rules apply to any wireless provider.

2. Pursuant to these rules, a public utility must allow an~~[y]~~ attaching entity nondiscriminatory access to utility poles at rates, terms and conditions that are just and reasonable.

C. Application of Rate Methodology -- The rate methodology described in Section R746-345-5 shall be used to determine rates that a public utility may charge an~~[y other public utility, wireless provider, cable television company, or other]~~ attaching entity to attach to its poles for compensation.

R746-345-2. General Definitions.

A. "Attaching Entity" -- A public utility, wireless provider, cable television company or other entity that attaches to a pole owned or controlled by a public utility excluding those attachments used for signage and lighting.

B. "Distribution Pole" -- A utility pole, excluding towers, used by a pole owner to support mainly overhead distribution wires or cables.

C. "Pole Attachment"-- ~~[The bolt, bracket, hook, or other]~~All equipment, and the devices used to attach the equipment, of an attaching entity within that attaching entity's allocated attachment space. [secure an attaching entity's equipment to a utility pole of a public utility.] A new or existing service wire drop pole attachment that is attached to the same pole as an existing attachment of the attaching entity is considered a component of the existing attachment for purposes of this rule. Additional equipment that meets all applicable code and contractual requirements that is placed within an attaching entity's existing attachment space is not an additional attachment for rental rate purposes.

D. "Attachment Space" -- The amount of usable space on a pole occupied by a pole attachment as provided for in R746-345-5(B)(3)(d).

E. "Pole Owner"-- A public utility having ownership or control of poles used, in whole or in part, for any electric or telecommunications services.

~~[E]~~F. "Secondary Pole" -- A pole used solely to provide service wire drops (the aerial wires or cables connecting to a customer premise).

~~[F]~~G. "Secondary Pole Attachment" -- A pole attachment to a secondary pole.

[G]H. "Wireless Provider" -- A corporation, partnership, or firm that provides cellular, Personal Communications Systems (PCS), or other commercial mobile radio service as defined in 47 U.S.C. 332 that has been issued a covering license by the Federal Communications Commission.

R746-345-3. Tariffs and Contracts.

A. Tariff Filings and Standard Contracts -- A pole owner shall submit a tariff and standard contract, or a Statement of Generally Available Terms (SGAT), specifying the rates, terms, and conditions for any pole attachment, to the Commission for approval.

1. A pole owner must petition the Commission for any changes or modifications to the rates, terms, or conditions of its tariff, standard contract or SGAT. A petition for change or modification must include a showing why the rate, term or condition is no longer just and reasonable. A change in rates, terms or conditions of an approved tariff, standard contract or SGAT will not become effective unless and until it has been approved by the Commission.

2. The tariff, standard contract or SGAT shall identify all rates, fees, and charges applicable to any pole attachment. The tariff, standard contract or SGAT shall set forth all non-recurring, standard charges for pole attachment work, including permitting, pre-construction surveys, inspections, and applicable processing. Other pole attachment work such as engineering, make-ready, and pole change-out shall also be identified in the tariff, standard contract or SGAT and billed on a time-and-materials basis for costs actually incurred and at rates or charges consistent with tariffs, standard contracts, or SGATs on file with the Commission. The tariff, standard contract, and SGAT shall also include but not be limited to:

- a. permitting process, inspection process, joint audit process, including shared scheduling and costs, and any non-recurring fee or charge applicable thereto;
- b. emergency access provisions; and
- c. any back rent recovery or unauthorized pole attachment fee and any applicable procedures for determining the liability of an attaching entity to pay back rent or any non-recurring fee or charge applicable thereto.

B. Establishing the Pole Attachment Relationship -- The pole attachment relationship shall be established when the pole owner and the attaching entity have executed the approved standard contract, or SGAT, or other Commission-approved contract.

C. Exception -- The pole owner and attaching entity may voluntarily negotiate an alternative contract incorporating some, all, or none of the terms of the standard contract or SGAT. The parties shall submit the negotiated contract to the Commission for approval. In situations in which the pole owner and attaching entity are unable to agree following good faith negotiations, the pole owner or attaching entity may petition the Commission for resolution as provided in Section R746-345-6. Pending resolution by the Commission, the parties shall use the standard contract or SGAT.

R746-345-4. Pole Labeling.

A. Pole Labeling -- A pole owner must label poles to indicate ownership. A pole owner shall label any new pole installed after the effective date of this rule immediately upon installation. Poles installed prior to the effective date of this rule, shall be labeled at the time of routine maintenance, normal replacement, change-out, or relocation, and whenever practicable. Labels shall be based on a good faith assertion of ownership.

B. Pole Attachment Labeling -- An attaching entity must label its pole attachments to indicate ownership. Pole attachment labels

may not be placed in a manner that could be interpreted to indicate an ownership of the utility pole. An attaching entity shall label any new pole attachment installed after the effective date of this rule immediately upon installation. Pole Attachments installed prior to the effective date of this rule, shall be labeled at the time of routine maintenance, normal replacement, rearrangement, rebuilding, or reconstruction, and whenever practicable.

R746-345-5. Rental Rate Formula and Methodology.

A. Basis -- The rental rate for ~~any~~ pole attachments must, on average, be sufficient to cover the recurring costs experienced by the pole owner as a result of the attachments. A ~~based on a~~ fair and reasonable method that will accomplish this objective is to use the portion of the pole owner's costs and expenses for the pole plant investment that is jointly used by the ~~an~~ attaching entit[y]ies as a proxy for the incremental costs. The rental rate for any pole attachment shall be based on the pole owner's investment in distribution poles. Any rate based on the rate formula in Subsection R746-345-5(B) shall be considered just and reasonable unless determined otherwise by the Commission.

B. Rate Formula -- A pole attachment rental rate shall be based on publicly filed data and must conform to the Federal Communications Commission's rules and regulations governing pole attachments, except as modified by this Section. A pole attachment rental rate shall be calculated and charged as an annual per attachment rental rate for each attachment space used by an attaching entity. The following formula and presumptions shall be used to establish pole attachment rates:

1. Formula:

Rate per attachment space = Space Used x (1/Usable Space) x Cost of Bare Pole x Carrying Charge Rate

2. Definitions:

a. "Carrying Charge Rate" means the percentage of a pole owner's depreciation expense, administrative and general expenses, maintenance expenses, taxes, rate of return, or other expenses that are directly or indirectly attributable to the pole owner's investment in poles. Carrying charge factors, except for the cost of capital, can be calculated on either a net or gross investment basis.

b. "Cost of Bare Pole" can be defined as either "net cost" or "gross cost." Gross cost means the original investment, purchase price, of poles and fixtures, excluding crossarms and appurtenances, divided by the number of poles represented in the investment amount. Net cost means the original investment, purchase price, of poles and fixtures, excluding crossarms and appurtenances, less depreciation reserve and deferred federal income taxes associated with the pole investment, divided by the number of poles represented in the investment amount. A pole owner may use gross cost only when its net cost is a negative balance. If using the net or gross cost results in an unfair or unreasonable outcome, a pole owner or attaching entity can seek relief from the Commission under R746-345-5 C.

c. "Unusable Space" means the space on a utility pole below the usable space including the amount required to set the depth of the pole.

d. "Usable Space" means the space on a utility pole above the minimum grade level to the top of the pole, which includes the space occupied by the pole owner.

3. Rebuttable presumptions:

- a. Average pole height equals 37.5 feet.
- b. Usable space per pole equals 13.5 feet.
- c. Unusable space per pole equals 24 feet.

d. Space used by an attaching entity:

- (i) An electric pole attachment equals 7.5 feet;
- (ii) A telecommunications pole attachment equals 1.0 foot;
- (iii) A cable television pole attachment equals 1.0 foot; and
- (iv) An electric, cable, or telecommunications secondary pole attachment equals 1.0 foot.

(v) A wireless provider's pole attachment equals not less than 1.0 foot and shall be determined ~~[jointly]~~ by the amount of space on the pole that is rendered unusable for other uses, as a result of the attachment or the associated equipment, [owner and wireless provider.] The space used by a wireless provider may be established as an average and included in the pole owner's tariff and standard contract, or SGAT, pursuant to Section R746-345-3 of this Rule.

e. The space used by a wireless provider:

~~i. shall include the height of the pole above that which the pole owner would generally install to facilitate its own pole attachment or the pole attachments of any attaching entity;~~

~~ii. shall include actual placement of equipment and appropriate standard clearances for said equipment, of equipment placed in the usable space or unusable space on a utility pole;~~

~~iii. (i) may not include any of the length of a vertically placed cable, wire, [or] conduit, antenna, or other facility unless the vertically placed cable, wire, [or] conduit, antenna, or other facility prevents another attaching entity from placing a pole attachment in the usable space of the pole;~~

~~iv. (iv) may not exceed the average pole height established in Subsection R746-345-5(B)(2)(a).~~

~~v. (v) In situations in which the pole owner and wireless provider are unable to agree, following good faith negotiations, on the space used by the wireless provider as determined in Subsection R746-345-5(B)(3)(d)(v), the pole owner or wireless provider may petition the Commission to determine the footage of space used by the wireless provider as provided in Subsection R746-345-3(C)).~~

~~f. The Commission shall recalculate the rental rate only when it deems necessary. Pole owners or attaching entities may petition the Commission to reexamine the rental rate.~~

4. A pole owner may not assess a fee or charge in addition to an annual pole attachment rental rate, including any non-recurring fee or charge described in Subsection R746-345-3(A)(2), for any

cost included in the calculation of its annual pole attachment rental rate.

C. Commission Relief -- A pole owner or attaching entity may petition the Commission to review a pole attachment rental rate, rate formula, or rebuttable presumption as provided for in this rule. The petition must include a factual showing that a rental rate, rate formula or rebuttable presumption is unjust, unreasonable or otherwise inconsistent with the public interest.

R746-345-6. Dispute Resolution.

A. Except as otherwise precluded by law, a resolution of any dispute concerning any pole attachment agreement, negotiation, permit, audit, or billing may be pursued through mediation while reserving to the parties all rights to an adjudicative process before the Commission.

1. The parties may file their action with the Commission and request leave to pursue mediation any time before a hearing.

2. The choice of mediator and the apportionment of costs shall be determined by agreement of the parties. However, the parties may jointly request a mediator from the Commission or the Division of Public Utilities.

B. If the parties reach a mediated agreement or settlement, they will prepare and sign a written agreement and submit it to the Commission. Unless the agreement or settlement is contrary to law and this rule, R746-345, the Commission will approve the agreement or settlement and dismiss or cancel proceedings concerning the matters settled.

1. If the agreement or settlement does not resolve all of the issues, the parties shall prepare a stipulation that identifies the issues resolved and the issues that remain in dispute.

2. If any issues remain unresolved, the matter will be scheduled for a hearing before the Commission.

KEY: public utilities, pole attachments, telecommunications, telephone utility regulation

[2004]2005

54-4-13

▼ ————— ▼

End of the Notices of Changes in Proposed 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).

Capitol Preservation Board (State),
Administration
R131-1
Procurement of Architectural and
Engineering Services

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

DAR FILE No.: 27711
FILED: 02/16/2005, 13:05

**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: Subsections 63C-9-301(3)(a), 63C-9-301(4), and 63C-9-402(15) provide for and authorize the State Capitol Preservation Board to adopt rules governing the procurement of architectural and engineering services. Section 63C-9-401 and Subsection 63C-9-402(15) authorize the Executive Director to assist the State Capitol Preservation Board in performing their duties.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There were no written comments received during and since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to carry out the duties required by Section 63C-9-301 to provide for the procurement of architectural and engineering services for the buildings and grounds on Capitol Hill. Therefore, this rule should be continued.

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

CAPITOL PRESERVATION BOARD (STATE)
ADMINISTRATION
Room E110 EAST BUILDING
420 N STATE ST
SALT LAKE CITY UT 84114-2110, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

David H. Hart or Sarah Whitney at the above address, by phone at 801-538-3074 or 801-538-3074, by FAX at 801-538-3221 or 801-538-3221, or by Internet E-mail at dhart@utah.gov or swhitney@utah.gov

AUTHORIZED BY: David H. Hart, AIA, Executive Director

EFFECTIVE: 02/16/2005



Capitol Preservation Board (State),
Administration
R131-2
Capitol Hill Facility Use

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

DAR FILE No.: 27712
FILED: 02/16/2005, 13:06

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsections 63C-9-301(1)(a) and 63C-9-301(3)(a) provide for and authorize the State

Capitol Preservation Board to adopt rules governing, administering, and regulating the State Capitol Hill Facilities and Grounds managed by the State Capitol Preservation Board. Section 63C-9-401 authorizes the Executive Director to assist the State Capitol Preservation Board in performing their duties.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Capitol Preservation Board received comments requesting that alcohol and alcohol use be allowed in Capitol Hill facilities and grounds.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to carry out the duties required by Section 63C-9-301 regarding the use of the State Capitol facilities. Therefore, this rule should be continued. The Capitol Preservation Board considered the request for alcohol and alcohol use to be allowed in Capitol Hill Facilities and grounds and decided against it.

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

CAPITOL PRESERVATION BOARD (STATE)
ADMINISTRATION
Room E110 EAST BUILDING
420 N STATE ST
SALT LAKE CITY UT 84114-2110, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sarah Whitney or David H. Hart at the above address, by phone at 801-538-3074 or 801-538-3074, by FAX at 801-538-3221 or 801-538-3221, or by Internet E-mail at swhitney@utah.gov or dhart@utah.gov

AUTHORIZED BY: David H. Hart, AIA, Executive Director

EFFECTIVE: 02/16/2005

AUTHORIZE OR REQUIRE THE RULE: Subsections 63C-9-301(3)(a) and 63C-9-402(1) provide for and authorize the State Capitol Preservation Board to adopt rules governing the Executive Director to devise and develop a master-planning process for Capitol Hill Facilities; for future capital facilities expansion of the state Capitol grounds; and for projected Capitol Hill facility growth needs. Section 63C-9-401 authorizes the Executive Director to assist the State Capitol Preservation Board in performing their duties.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There were no written comments received during and since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to carry out the duties required by Section 63C-9-301 regarding procedure for the Executive Director to devise and develop a master-planning process for Capitol Hill facilities and for future needs. Therefore, this rule should be continued.

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

CAPITOL PRESERVATION BOARD (STATE)
ADMINISTRATION
Room E110 EAST BUILDING
420 N STATE ST
SALT LAKE CITY UT 84114-2110, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
David H. Hart or Sarah Whitney at the above address, by phone at 801-538-3074 or 801-538-3074, by FAX at 801-538-3221 or 801-538-3221, or by Internet E-mail at dhart@utah.gov or swhitney@utah.gov

AUTHORIZED BY: David H. Hart, AIA, Executive Director

EFFECTIVE: 02/16/2005

Capitol Preservation Board (State),
Administration
R131-7

State Capitol Preservation Board
Master Planning Policy

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

DAR FILE No.: 27713
FILED: 02/16/2005, 13:06

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS

Commerce, Securities
R164-2
Investment Adviser - Unlawful Acts

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

DAR FILE No.: 27732
FILED: 02/28/2005, 12:02

**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: Section 61-1-2 describes the acts of investment advisers which are deemed to be unlawful, and provides that the Division may, by rule, adopt exemptions

from the section's requirements for investment advisory contracts. Section 61-1-24 allows the Division to make rules when necessary to carry out provisions of the chapter.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No 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 rule defines the circumstances under which an exception to the prohibition against performance-based fees contained in Section 61-1-2 is permissible. It protects the public by ensuring that specific requirements are met before an investment adviser may receive performance-based compensation for investment advisory services. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Charles Lyons at the above address, by phone at 801-530-6940, by FAX at 801-530-6980, or by Internet E-mail at clyons@utah.gov

AUTHORIZED BY: Charles Lyons, Securities Analyst

EFFECTIVE: 02/28/2005



Education, Administration
R277-501
Educator Licensing Renewal, Highly
Qualified and Timelines

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

DAR FILE NO.: 27722
FILED: 02/23/2005, 07:58

**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: Section 53A-6-104 requires the State Board of Education to make rules requiring participation in professional development activities in order for educators to retain Utah licensure.

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: State law requires that educators participate in professional development activities to retain licensure and that the State Board of Education have rules regarding that participation. It is important for educators to participate in professional development activities because No Child Left Behind requirements demand upgrades in teacher preparation. Professional development requirements move teachers toward this goal. In addition, increased focus on student achievement requires teachers to have frequent and meaningful professional development opportunities. Therefore, this rule should be continued.

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: 02/23/2005



NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Public Service Commission

Administration

No. 27587 (AMD): R746-200-6. Termination of Service.

Published: January 1, 2005

Effective: February 25, 2005

Commerce

Occupational and Professional Licensing

No. 27600 (AMD): R156-31b. Nurse Practice Act Rules.

Published: January 15, 2005

Effective: February 17, 2005

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 1, 2005, including notices of effective date received through March 1, 2005, the effective dates of which are no later than March 15, 2005. 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. 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	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Administrative Services					
<u>Fleet Operations</u>					
R27-1-2	Definitions	27546	AMD	01/10/2005	2004-23/3
R27-3-6	Application for Commute or Take Home Use	27599	NSC	02/01/2005	Not Printed
R27-4	Vehicle Replacement and Expansion of State Fleet	27543	AMD	01/10/2005	2004-23/5
R27-4-1	Authority	27594	NSC	02/01/2005	Not Printed
R27-6	Fuel Dispensing Program	27544	AMD	01/10/2005	2004-23/7
<u>Records Committee</u>					
R35-1a	State Records Committee Definitions	27621	NEW	03/08/2005	2005-2/17
R35-2	Declining Appeal Hearings	27625	AMD	03/04/2005	2005-2/18
R35-3	Prehearing Conferences	27622	AMD	03/04/2005	2005-2/19
R35-4	Compliance with State Records Committee Decisions and Orders	27624	AMD	03/04/2005	2005-2/20
R35-5	Subpoenas Issued by the Records Committee	27623	AMD	03/04/2005	2005-2/21

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CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R35-6	Expedited Hearing	27620	AMD	03/04/2005	2005-2/22
Agriculture and Food					
<u>Animal Industry</u>					
R58-1	Admission and Inspection of Livestock, Poultry, and Other Animals	27570	AMD	01/18/2005	2004-24/5
R58-2	Diseases, Inspections and Quarantines	27581	AMD	02/01/2005	2005-1/9
R58-7	Livestock Markets, Satellite Video Livestock Auction Market, Livestock Sales, Dealers, and Livestock Market Weighpersons	27688	5YR	02/01/2005	2005-4/47
R58-10	Meat and Poultry Inspection	27693	5YR	02/03/2005	2005-5/28
R58-17	Aquaculture and Aquatic Animal Health	27696	5YR	02/03/2005	2005-5/28
R58-21	Trichomoniasis	27694	5YR	02/03/2005	2005-5/29
R58-22	Equine Infectious Anemia (EIA)	27695	5YR	02/03/2005	2005-5/29
<u>Plant Industry</u>					
R68-3	Utah Fertilizer Act Governing Fertilizers and Soil Amendments	27645	5YR	01/07/2005	2005-3/58
R68-20	Utah Organic Standards	27697	5YR	02/04/2005	2005-5/30
<u>Regulatory Services</u>					
R70-440	Egg Products Inspection	27514	NSC	01/01/2005	Not Printed
R70-440-2	Adopt by Reference	27628	AMD	02/15/2005	2005-2/23
R70-960-7	Registration Certificate Displayed	27523	NSC	01/01/2005	Not Printed
Capitol Preservation Board (State)					
<u>Administration</u>					
R131-1	Procurement of Architectural and Engineering Services	27711	5YR	02/16/2005	2005-6/33
R131-2	Capitol Hill Facility Use	27712	5YR	02/16/2005	2005-6/33
R131-7	State Capitol Preservation Board Master Planning Policy	27713	5YR	02/16/2005	2005-6/34
R131-8	CPB Facilities and Grounds: Maintenance of Aesthetics	27631	NEW	03/03/2005	2005-2/24
R131-9	State Capitol Preservation Board Art Program and Policy	27632	NEW	03/03/2005	2005-2/26
Commerce					
<u>Administration</u>					
R151-1	Department of Commerce General Provisions	27633	NEW	02/15/2005	2005-2/29
R151-46b	Department of Commerce Administrative Procedures Act Rules	27636	AMD	02/15/2005	2005-2/32
<u>Occupational and Professional Licensing</u>					
R156-1	General Rules of the Division of Occupational and Professional Licensing	27499	NSC	01/01/2005	Not Printed
R156-31b	Nurse Practice Act Rules	27600	AMD	02/17/2005	2005-2/36
R156-47b	Massage Therapy Practice Act Rules	27548	CPR	03/07/2005	2005-3/51
R156-47b	Massage Therapy Practice Act Rules	27548	AMD	03/07/2005	2004-24/7
R156-50	Private Probation Provider Licensing Act Rules	27435	CPR	01/18/2005	2004-24/58
R156-50	Private Probation Provider Licensing Act Rules	27435	AMD	01/18/2005	2004-20/12
R156-56	Utah Uniform Building Standard Act Rules	27489	AMD	01/01/2005	2004-21/6
R156-56-704	Statewide Amendments to the IBC	27490	AMD	01/01/2005	2004-21/11
R156-61-502	Unprofessional Conduct	27538	AMD	01/04/2005	2004-23/40
R156-71-202	Naturopathic Physician Formulary	27533	AMD	01/04/2005	2004-23/41

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>Securities</u>					
R164-2	Investment Adviser - Unlawful Acts	27732	5YR	02/28/2005	2005-6/35
Community and Economic Development					
<u>Community Development, Community Services</u>					
R202-202-202	Opening and Closing Dates for HEAT Program	27418	AMD	01/12/2005	2004-19/24
R202-203-324	Income Deductions	27421	AMD	01/12/2005	2004-19/25
R202-203-328	Self-Employment Income	27419	AMD	01/12/2005	2004-19/26
R202-207-702	Records Management	27420	AMD	01/12/2005	2004-19/27
Education					
<u>Administration</u>					
R277-400	School Emergency Response Plans	27539	NSC	01/01/2005	Not Printed
R277-473	Testing Procedures	27547	AMD	01/04/2005	2004-23/43
R277-501	Educator Licensing Renewal, Highly Qualified and Timelines	27722	5YR	02/23/2005	2005-6/35
R277-725	Electronic High School	27507	NSC	01/01/2005	Not Printed
R277-733	Adult Education Programs	27592	AMD	02/01/2005	2005-1/10
R277-746	Driver Education Programs for Utah Schools	27520	NSC	01/01/2005	Not Printed
Environmental Quality					
<u>Air Quality</u>					
R307-110-11	Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide	27429	CPR	03/04/2005	2005-3/52
R307-110-12	Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide	27343	AMD	01/04/2005	2004-17/12
R307-110-12	Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide	27343	CPR	01/04/2005	2004-23/53
<u>Drinking Water</u>					
R309-305	Certification Rules for Backflow Technicians	27617	NSC	02/01/2005	Not Printed
<u>Radiation Control</u>					
R313-34	Requirements for Irradiators	27738	5YR	03/08/2005	Not Printed
R313-34-1	Requirements for Irradiators	27646	NSC	02/01/2005	Not Printed
<u>Water Quality</u>					
R317-4	Onsite Wastewater Systems	27699	5YR	02/10/2005	2005-5/30
R317-7	Underground Injection Control (UIC) Program	27596	NSC	02/01/2005	Not Printed
Governor					
<u>Planning and Budget, Chief Information Officer</u>					
R365-101	Utah Geographic Information Systems Advisory Council	27545	NEW	03/09/2005	2004-23/45
Health					
<u>Administration</u>					
R380-40	Local Health Department Minimum Performance Standards	27571	AMD	02/02/2005	2004-24/9
<u>Health Care Financing, Coverage and Reimbursement Policy</u>					
R414-1B	Prohibition of Payment for Certain Abortion Services	27582	NSC	02/01/2005	Not Printed
R414-7D	Intermediate Care Facility for the Mentally Retarded Transition Project	27505	NEW	01/03/2005	2004-22/15
R414-10A-6	Prior Authorization	27486	NSC	01/01/2005	Not Printed
R414-34-6	Qualified Providers	27589	AMD	02/01/2005	2005-1/21

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R414-36-6	Qualified Providers	27591	AMD	02/01/2005	2005-1/22
R414-61-2	Incorporation by Reference	27586	AMD	02/01/2005	2005-1/23
R414-63	Medicaid Policy for Pharmacy Reimbursement	27549	AMD	01/26/2005	2004-24/13
R414-90	Diabetes Self-Management Training	27557	AMD	01/19/2005	2004-24/15
R414-200	Non-Traditional Medicaid Health Plan Services	27588	AMD	02/01/2005	2005-1/24
R414-507	Medicaid Long Term Care Managed Care	27629	NEW	02/15/2005	2005-2/42
<u>Health Systems Improvement, Emergency Medical Services</u>					
R426-12	Emergency Medical Services Training and Certification Standards	27519	AMD	02/01/2005	2004-22/26
R426-13	Emergency Medical Services Provider Designations	27521	AMD	02/01/2005	2004-23/47
R426-14-303	Ambulance Service and Paramedic Service Licensure	27584	NSC	02/01/2005	Not Printed
R426-15	Licensed and Designated Provider Operations	27522	AMD	02/01/2005	2004-23/48
<u>Health Systems Improvement, Licensing</u>					
R432-7	Specialty Hospital - Psychiatric Hospital Construction	27674	5YR	01/28/2005	2005-4/47
R432-8	Specialty Hospital - Chemical Dependency/Substance Abuse Construction	27675	5YR	01/28/2005	2005-4/48
R432-9	Specialty Hospital - Rehabilitation Construction Rule	27676	5YR	01/28/2005	2005-4/48
R432-10	Specialty Hospital - Long-Term Acute Care Construction Rule	27677	5YR	01/28/2005	2005-4/49
R432-11	Specialty Hospital - Orthopedic Hospital Construction	27678	5YR	01/28/2005	2005-4/49
R432-12	Small Health Care Facility (Four to Sixteen Beds) Construction Rule	27679	5YR	01/28/2005	2005-4/50
R432-13	Freestanding Ambulatory Surgical Center Construction Rule	27680	5YR	01/28/2005	2005-4/50
R432-14	Birthing Center Construction Rule	27681	5YR	01/28/2005	2005-4/51
R432-30	Adjudicative Procedure	27682	5YR	01/28/2005	2005-4/51
R432-270	Assisted Living Facilities	27683	5YR	01/31/2005	2005-4/52
Human Services					
<u>Administration, Administrative Services, Licensing</u>					
R501-18	Abuse Background Screening	27673	5YR	01/27/2005	2005-4/52
<u>Substance Abuse and Mental Health</u>					
R523-1	Policies and Procedures	27638	AMD	03/07/2005	2005-3/28
<u>Recovery Services</u>					
R527-10	Disclosure of Information to the Office of Recovery Services	27640	5YR	01/06/2005	2005-3/58
R527-40	Retained Support	27642	5YR	01/06/2005	2005-3/59
R527-210	Guidelines for Setting Child Support Awards	27534	REP	01/04/2005	2004-23/49
R527-475	State Tax Refund Intercept	27641	5YR	01/06/2005	2005-3/59
<u>Services for People with Disabilities</u>					
R539-1	Eligibility	27568	AMD	01/25/2005	2004-24/17
Insurance					
<u>Administration</u>					
R590-88	Prohibited Transactions Between Agents and Unauthorized Multiple Employer Trusts	27684	5YR	01/31/2005	2005-4/53
R590-128	Unfair Discrimination Based Solely on the Failure to Maintain Auto Insurance (Revised)	27685	5YR	01/31/2005	2005-4/53
R590-132	Insurance Treatment of Human Immunodeficiency Virus (HIV) Infection	27686	5YR	01/31/2005	2005-4/54

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R590-147	Annual and Quarterly Statement Filing Instructions	27556	R&R	02/10/2005	2004-24/21
R590-163	Filing Quarterly Statements	27554	REP	02/10/2005	2004-24/23
R590-174	Diskette Filing of Annual and Quarterly Statements	27555	REP	02/10/2005	2004-24/24
R590-196	Bail Bond Surety Fee Standards, Collateral Standards, and Disclosure Form	27644	5YR	01/07/2005	2005-3/60
R590-196	Bail Bond Surety Fee Standards, Collateral Standards, and Disclosure Form	27558	AMD	02/10/2005	2004-24/25
Judicial Conduct Commission					
<u>Administration</u>					
R595-1	Rules of Procedure	27580	REP	02/01/2005	2005-1/26
R595-1	General Provisions	27330	CPR	02/01/2005	2004-24/59
R595-1	General Provisions	27330	NEW	02/01/2005	2004-17/18
R595-2	Administration	27331	NEW	02/01/2005	2004-17/23
R595-2	Administration	27331	CPR	02/01/2005	2004-24/60
R595-3	Procedure	27332	CPR	02/01/2005	2004-24/61
R595-3	Procedure	27332	NEW	02/01/2005	2004-17/24
R595-3-10	Discipline by Consent	27668	NSC	02/01/2005	Not Printed
R595-4	Sanctions	27333	NEW	02/01/2005	2004-17/26
R595-4	Sanctions	27333	CPR	02/01/2005	2004-24/64
Labor Commission					
<u>Safety</u>					
R616-2-3	Safety Codes and Rules for Boilers and Pressure Vessels	27616	AMD	03/07/2005	2005-2/49
R616-3-3	Safety Codes for Elevators	27590	AMD	02/01/2005	2005-1/30
Natural Resources					
<u>Parks and Recreation</u>					
R651-202	Boating Advisory Council	27560	AMD	01/15/2005	2004-24/28
R651-205-7	Palisade Lake	27559	AMD	01/15/2005	2004-24/29
R651-206	Carrying Passengers for Hire	27561	AMD	01/15/2005	2004-24/29
R651-206	Carrying Passengers for Hire	27664	NSC	02/01/2005	Not Printed
R651-209	Registration Expiration	27562	REP	01/15/2005	2004-24/32
R651-211	Assigned Numbers	27563	AMD	01/15/2005	2004-24/33
R651-212	Display of Yearly Registration Decals and Month of Expiration Decals	27564	AMD	01/15/2005	2004-24/34
R651-215	Personal Flotation Devices	27565	AMD	01/15/2005	2004-24/35
R651-401	Off-Highway Vehicle and Registration Stickers	27566	AMD	01/15/2005	2004-24/37
<u>Water Rights</u>					
R655-3	Reports of Water Right Conveyance	27690	5YR	02/01/2005	2005-4/54
R655-4	Water Well Drillers	27392	AMD	01/12/2005	2004-18/30
R655-4	Water Well Drillers	27691	5YR	02/01/2005	2005-4/55
R655-4	Water Well Drillers	27475	NSC	02/01/2005	Not Printed
<u>Wildlife Resources</u>					
R657-5	Taking Big Game	27550	AMD	01/15/2005	2004-24/38
R657-13	Taking Fish and Crayfish	27432	CPR	01/03/2005	2004-22/66
R657-13	Taking Fish and Crayfish	27432	AMD	01/03/2005	2004-20/33
R657-33	Taking Bear	27649	AMD	03/04/2005	2005-3/36

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CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R657-37	Cooperative Wildlife Management Units for Big Game	27551	AMD	01/15/2005	2004-24/45
R657-38	Dedicated Hunter Program	27552	AMD	01/15/2005	2004-24/48
R657-42-4	Surrenders	27553	AMD	01/15/2005	2004-24/53
R657-47	Trust Fund Permits	27639	REP	03/04/2005	2005-3/39
Professional Practices Advisory Commission					
<u>Administration</u>					
R686-100	Professional Practices Advisory Commission, Rules of Procedure: Complaints and Hearings	27542	NSC	01/01/2005	Not Printed
Public Safety					
<u>Fire Marshal</u>					
R710-3-3	Amendments and Additions	27654	AMD	03/04/2005	2005-3/42
R710-4-3	Amendments and Additions	27653	AMD	03/04/2005	2005-3/44
R710-6	Liquefied Petroleum Gas Rules	27573	AMD	01/19/2005	2004-24/54
R710-8	Day Care Rules	27574	NSC	01/01/2005	Not Printed
R710-9-6	Amendments and Additions	27655	AMD	03/04/2005	2005-3/47
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<u>Administration</u>					
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ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

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<u>prescriptions</u> Health, Health Care Financing, Coverage and Reimbursement Policy	27549	R414-63	AMD	01/26/2005	2004-24/13
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