

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed March 16, 2005, 12:00 a.m. through April 1, 2005, 11:59 p.m.

Number 2005-8
April 15, 2005

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

Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, 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/>

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Division of Administrative Rules, Salt Lake City 84114

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Printed in the United States of America

Library of Congress Cataloging-in-Publication Data

Utah state bulletin.

Semimonthly.

1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.

I. Utah. Office of Administrative Rules.

KFU440.A73S7

348.792'025--DDC

85-643197

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NOTICES OF PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between March 16, 2005, 12:00 a.m., and April 1, 2005, 11:59 p.m. are included in this, the April 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 Rules being repealed are completely struck out.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 May 16, 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 August 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.

Commerce, Occupational and
Professional Licensing
R156-17a
Pharmacy Practice Act Rules

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 27786

FILED: 03/31/2005, 14:08

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2004 General Session of the Legislature, a new statute (Title 58, Chapter 17b) governing the practice of pharmacy was enacted and the existing statute (Title 58, Chapter 17a) was repealed effective July 1, 2004 (S.B. 114 (2004)). Since a new rule and subsequent change in proposed rule (CPR) filings have been proposed for Rule R156-17b (DAR No. 27529) to clarify the provisions of the newly enacted statute, this rule is no longer necessary. It should be noted that the first repeal filing (DAR No. 27528) affecting this rule lapsed on 03/31/2005. However, the Division is filing this second repeal filing as additional amendments affecting the proposed changes to Rule R156-17b are still in process and the Division could not make the first repeal rule filing effective on 03/31/2005 because there would not be a new rule to take its place. (DAR NOTE: S.B. 114 is found at UT L 2004 Ch 280, and was effective 07/01/2004.)

SUMMARY OF THE RULE OR CHANGE: This rule is being repealed in its entirety. Most of the provisions being deleted in this rule can now be found in the new proposed rule and subsequent CPRs for Rule R156-17b (DAR File No. 27529). (DAR NOTE: The second CPR filing on Rule R156-17b is under DAR No. 27529 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 58-17a-101 and 58-37-1, and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Deletes the following: The American Pharmaceutical Association Code of Ethics, October 1994; Food and Drug Administration Compliance Policy Guideline 460.200, March 16, 1992; and the United States Pharmacopeia/National Formulary (USP/NF), 2003 edition, January 1, 2004, through Supplement 2, dated August 1, 2003

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** The Division does not anticipate any costs or savings from this rule being repealed in its entirety. Any costs or savings associated with implementing the newly enacted Pharmacy Practice Act are identified in the new rule filing and subsequent CPRs for Rule R156-17b.
- ❖ **LOCAL GOVERNMENTS:** This rule being repealed does not apply to local governments.
- ❖ **OTHER PERSONS:** The Division does not anticipate any costs or savings from this rule being repealed in its entirety. Any costs or savings associated with implementing the newly

enacted Pharmacy Practice Act are identified in the new rule filing and subsequent CPRs for Rule R156-17b.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division does not anticipate any costs or savings from this rule being repealed in its entirety. Any costs or savings associated with implementing the newly enacted Pharmacy Practice Act are identified in the new rule filing and subsequent CPRs for Rule R156-17b.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing repeals the rule associated with Title 58, Chapter 17a, which has been repealed by passage of S.B. 114 in the 2004 Legislative Session. There appears to be no fiscal impact to businesses as a result of this repeal. The fiscal impact associated with the enactment of the new rule to administer the new Pharmacy Practice Act (Title 58, Chapter 17b) adopted by passage of S.B. 114 is addressed in a separate rule filing. Russell C. Skousen, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Diana Baker at the above address, by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at dbaker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/16/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 05/17/2005

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.

~~**R156-17a. Pharmacy Practice Act Rules.**~~

~~**R156-17a-101. Title.**~~

— These rules are known as the "Pharmacy Practice Act Rules".

~~**R156-17a-102. Definitions.**~~

— In addition to the definitions in Title 58, Chapters 1 and 17a, as used in Title 58, Chapters 1 and 17a or these rules:

— (1) "Dispense", as defined in Subsection 58-17a-102(9), does not include transferring medications for a patient from a legally dispensed prescription for that particular patient into a daily or weekly drug container to facilitate the patient taking the correct medications.

— (2) "NAPLEX" means North American Pharmacy Licensing Examination.

— (3) "NABP" means the National Association of Boards of Pharmacy.

— (4) "Qualified continuing education" as used in these rules, means continuing education that meets the standards set forth in Section R156-17a-313.

— (5) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 17a, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-17a-502.

R156-17a-103. Authority—Purpose.

— These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 17a.

R156-17a-104. Organization—Relationship to Rules R156-1.

— The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-17a-301. Licensure—Pharmacist—Pharmacy Internship Standards.

— In accordance with Subsection 58-17a-302(1)(d), the standards for the internship required for licensure as a pharmacist include the following:

— (1) The internship shall consist of at least 1500 hours obtained in Utah, in another state or territory of the United States, or in Utah and another state or territory of the United States.

— (a) Internship hours completed in Utah shall include at least 360 hours but not more than 900 hours in a college coordinated practical experience program as an integral part of the curriculum which shall include a minimum of 120 hours in each of the following practices:

— (i) community pharmacy;

— (ii) hospital pharmacy; and

— (iii) another pharmacy setting.

— (b) Internship hours completed in another state or territory of the United States shall be accepted based on the approval of hours by the state pharmacy board of that jurisdiction.

— (2) Evidence of completed internship hours shall be documented to the division by the pharmacy intern at the time application is made for a Utah pharmacist license or at the completion of the Utah internship, if not seeking Utah licensure.

R156-17a-302. Licensure—Pharmacist Examinations.

— In accordance with Subsection 58-17a-302(1)(e), the examinations which must be successfully passed by applicants for licensure as a pharmacist are:

— (1) the NAPLEX with a passing score as established by the NABP;

— (2) the Multistate Pharmacy Jurisprudence Examination with a minimum passing score as established by the NABP.

R156-17a-303. Licensure—Pharmacist by Endorsement.

— In accordance with Subsections 58-1-203(2) and 58-1-301(3), an applicant for licensure as a pharmacist by endorsement shall apply through the "Licensure Transfer Program" administered by NABP.

R156-17a-304. Licensure—Pharmacy Technician—Education Standards.

— (1) In accordance with Subsection 58-17a-302(4)(e), the standards for the program of education and training which is a requirement for licensure as a pharmacy technician shall include:

— (a) The program shall consist of at least 300 hours of combined didactic and clinical training to include at a minimum the following topics:

— (i) legal aspects of pharmacy practice such as laws and rules governing practice;

— (ii) hygiene and aseptic technique;

— (iii) terminology, abbreviations and symbols;

— (iv) pharmaceutical calculations;

— (v) identification of drugs by trade and generic names, and therapeutic classifications;

— (vi) filling of orders and prescriptions including packaging and labeling;

— (vii) ordering, restocking, and maintaining drug inventory; and

— (viii) computer applications in the pharmacy.

— (b) The program of education and training shall be outlined in a written plan and shall include a final examination covering at a minimum the topics listed in Subsection (1)(a) above.

— (2) The written outline of the training program including the examination shall be available to the division and board upon request.

R156-17a-305. Licensure—Pharmacy Technician—Examinations.

— (1) In accordance with Subsection 58-17a-302(4)(e)(ii)(B), the examinations which must be passed by all applicants applying for licensure as a pharmacy technician are:

— (a) the Utah Pharmacy Technician Law and Rule Examination with a passing score of at least 75; and

— (b) the National Pharmacy Technician Certification Examination with a passing score as established by the Pharmacy Technician Certification Board.

R156-17a-306. Licensure—Pharmacy Intern—Education.

— (1) In accordance with Subsection 58-17a-302(5)(a)(i), the approved program is one which is accredited by the American Council on Pharmaceutical Education.

— (2) In accordance with Subsection 58-17a-302(5)(b), the preliminary educational qualifications are as defined in Subsection 58-17a-302(5)(b).

— (3) In accordance with Subsection 58-17a-302(5)(b), a recognized college or school of pharmacy is one which has a pharmacy program accredited by the American Council on Pharmaceutical Education.

R156-17a-307. Licensure—Preceptor Approval.

— In accordance with Subsection 58-17a-102(45), the requirements which must be met by a licensed pharmacist to be approved as a preceptor are:

— (1) hold a Utah pharmacist license that is active and in good standing;

—(2) have been engaged in active practice as a licensed pharmacist for not less than two years immediately preceding the application for approval as a preceptor, except if employed as a professional experience program coordinator in a pharmacy program accredited by the American Council on Pharmaceutical Education; and

—(3) have not been under any sanction at any time which sanction is considered by the division or board to have been of such a nature that the best interests of the intern and the public would not be served by approving the licensee as a preceptor.

R156-17a-308. Licensure—Administrative Inspection.

—In accordance with Subsections 58-1-203(2), 58-1-301(3), 58-17a-303(4)(d) and Section 58-17a-103, an administrative inspection may be:

—(1) an onsite inspection; or

—(2) a self report inspection completed by the pharmacist in charge on an audit form supplied by the division.

R156-17a-309. Licensure—Meet with the Board.

—In accordance with Subsections 58-1-203(2) and 58-1-301(3), an applicant for licensure under Title 58, Chapter 17a may be required to meet with the State Board of Pharmacy for the purpose of evaluating the applicant's qualifications for licensure.

R156-17a-310. Licensure—Out-of-state Mail Order Pharmacy.

—In accordance with Subsections 58-1-203(2), 58-1-301(3), 58-17a-303(2)(e) and 58-17a-303(4)(d), the application for licensure as an out-of-state mail order pharmacy shall supply sufficient information concerning the applicant's standing in its state of domicile to permit the division and the board to determine the applicant's qualification for licensure in Utah. Such information shall include the following:

—(1) a certified letter from the licensing authority of the state in which the pharmacy is located attesting to the fact that the pharmacy is licensed in good standing and is in compliance with all laws and regulations of that state;

—(2) an affidavit affirming that the applicant will cooperate with all lawful requests and directions of the licensing authority of the state of domicile relating to the shipment, mailing or delivery of dispensed legend drugs into Utah; and

—(3) a copy of the most recent state inspection showing the status of compliance with laws and regulations for physical facility, records, and operations.

R156-17a-311. Licensure—Branch Pharmacy.

—In accordance with Subsections 58-1-203(2), 58-1-301(3) and Section 58-17a-614, the qualifications for licensure as a branch pharmacy include the following:

—(1) The division in collaboration with the board shall designate the location of each branch pharmacy. The following shall be considered in granting such designation:

—(a) the distance between or from nearby alternative pharmacies and all other factors affecting access of persons in the area to alternative pharmacy resources;

—(b) the availability at the location of qualified persons to staff the pharmacy consistent with Section R156-17a-609 of these rules;

—(c) the availability and willingness of a parent pharmacy and supervising pharmacist to assume responsibility for the branch pharmacy;

—(d) the availability of satisfactory physical facilities in which the branch pharmacy may operate; and

—(e) the totality of conditions and circumstances which surround the request for designation.

—(2) A branch pharmacy shall be licensed as a retail pharmacy branch of an existing retail, hospital, or institutional pharmacy licensed by the division.

—(3) The application for designation of a branch pharmacy shall be submitted by the licensed pharmacy seeking such designation. In the event more than one licensed pharmacy makes application for designation of a branch pharmacy location at a previously undesignated location, the division in collaboration with the board, shall review all applications for designation of the branch pharmacy and, if the location is approved, shall approve for licensure the applicant determined best able to serve the public interest.

—(4) The application shall include the following:

—(a) complete identifying information concerning the applying parent pharmacy;

—(b) complete identifying information concerning the designated supervising pharmacist employed at the parent pharmacy;

—(c) address and description of the facility in which the branch pharmacy is to be located;

—(d) a specific formulary to be stocked indicating with respect to each prescription drug the name, the dosage strength and dosage units in which the drug will be prepackaged;

—(e) complete identifying information concerning each person located at the branch pharmacy who will dispense prescription drugs in accordance with the approved protocol; and

—(f) protocols under which the branch pharmacy will operate and its relationship with the parent pharmacy to include the following:

—(i) the conditions under which prescription drugs will be stored, used, and accounted for;

—(ii) the method by which the drugs will be transported from parent pharmacy to the branch pharmacy and accounted for by the branch pharmacy;

—(iii) a description of how records will be kept with respect to:

—(A) formulary;

—(B) changes in formulary;

—(C) record of drugs sent by the parent pharmacy;

—(D) record of drugs received by the branch pharmacy;

—(E) record of drugs dispensed;

—(F) periodic inventories; and

—(G) any other record contributing to an effective audit trail with respect to prescription drugs provided to the branch pharmacy.

R156-17a-312. Licensure—Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer.

—In accordance with Subsections 58-1-203(2), 58-1-301(3), and 58-17a-303(2)(h) and (i), the requirements for licensure as a pharmaceutical wholesaler/distributor or pharmaceutical manufacturer are defined, clarified, or established as follows:

—(1) Each applicant for licensure as a pharmaceutical wholesaler/distributor or pharmaceutical manufacturer shall provide the following information:

—(a) the name, full business address and telephone number;

—(b) identification of all trade and business names used by the applicant;

—(c) addresses, telephone number and the names of contact persons at all locations in the state in which prescription drugs are located, stored, handled, distributed or manufactured;

~~—(d) a full description of the ownership of the applicant including business type/form, names and identifying information concerning owners, partners, stockholders if not a publicly held company, names and identifying information concerning company officers, and directors and management; and~~

~~—(e) other information necessary to enable the division in collaboration with the board to evaluate the requirements in Subsection (2) below.~~

~~—(2) In considering whether to grant a license to an applicant as a pharmaceutical wholesaler/distributor or pharmaceutical manufacturer, the division shall consider the public interest by examining:~~

~~—(a) any convictions of the applicant under any federal, state or local laws relating to the distribution or manufacturing of prescription drugs, drug samples, controlled substances or controlled substance precursors;~~

~~—(b) any convictions of a criminal offense or a finding of unprofessional conduct which when considered with the activity of distributing or manufacturing prescription drugs indicates there is or may reasonably be a threat to the public health, safety or welfare if the applicant were to be granted a license;~~

~~—(c) the applicant's past experience in the distribution or manufacture of prescription drugs including controlled substances to determine whether the applicant might reasonably be expected to be able to engage in the competent and safe distribution and manufacture of prescription drugs;~~

~~—(d) whether the applicant has ever furnished any false or misleading information in connection with the application or the past activities of the applicant in connection with the distribution or manufacture of prescription drugs;~~

~~—(e) whether the applicant has been the subject of any action against any license to engage in distribution or manufacture of prescription drugs;~~

~~—(f) compliance with licensing requirements under any previously granted license to engage in distribution or manufacture of prescription drugs;~~

~~—(g) compliance with requirements under federal, state or local law to make available to any regulatory authority those records concerning distribution or manufacture of prescription drugs; and~~

~~—(h) any other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant to safely and competently engage in the practice of distributing or manufacturing prescription drugs.~~

~~—(3) The responsible officer or management employee who is responsible for the supervision of the applicant consistent with Section R156-17a-612 shall be identified on the application.~~

R156-17a-313. Continuing Education—Pharmacist.

~~—(1) In accordance with Subsections 58-1-203(7) and 58-1-308(3)(b), there is created a continuing education requirement as a condition for renewal or reinstatement of pharmacist licenses issued under Title 58, Chapter 17a.~~

~~—(2) Continuing education shall consist of 24 hours of qualified continuing professional education in each preceding renewal period.~~

~~—(3) The required number of hours of qualified continuing professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.~~

~~—(4) Qualified continuing professional education shall consist of:~~

~~—(a) institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction, and programmed learning courses presented by an institution, individual, organization, association, corporation, or agency that has been approved by the American Council on Pharmaceutical Education (ACPE);~~

~~—(b) programs accredited by other nationally recognized healthcare accrediting agencies; and~~

~~—(c) educational meetings sponsored by the Utah Pharmaceutical Association or Utah Society of Health System Pharmacists.~~

~~—(5) Credit for qualified continuing professional education shall be recognized in accordance with the following:~~

~~—(a) a minimum of eight hours shall be obtained through attendance at lectures, seminars or workshops; and~~

~~—(b) a minimum of six hours shall be in drug therapy or patient management.~~

~~—(6) A licensee shall be responsible for maintaining competent records of completed qualified continuing professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified continuing professional education to demonstrate it meets the requirements under this section.~~

R156-17a-314. Continuing Education—Pharmacy Technician.

~~—(1) In accordance with Subsections 58-1-203(7) and 58-1-308(3)(b), there is created a continuing education requirement as a condition for renewal or reinstatement of pharmacy technician licenses issued under Title 58, Chapter 17a.~~

~~—(2) Continuing education shall consist of eight hours of qualified continuing professional education in each preceding renewal period.~~

~~—(3) The required number of hours of qualified continuing professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.~~

~~—(4) Qualified continuing professional education shall consist of:~~

~~—(a) institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction, and programmed learning courses sponsored or approved by an institution, individual, organization, association, corporation, or agency that has been approved by the American Council on Pharmaceutical Education (ACPE);~~

~~—(b) programs accredited by other nationally recognized healthcare accrediting agencies; and~~

~~—(c) educational meetings sponsored by the Utah Pharmaceutical Association or the Utah Society of Health System Pharmacists.~~

~~—(5) Documentation of current Pharmacy Technician Certification Board certification will count as meeting the requirement for continuing education.~~

~~—(6) Credit for qualified continuing professional education shall be recognized in accordance with the following:~~

~~—(a) a minimum of four hours shall be obtained through attendance at lectures, seminars or workshops.~~

~~—(7) A licensee shall be responsible for maintaining competent records of completed qualified continuing professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain~~

such information with respect to qualified continuing professional education to demonstrate it meets the requirements under this section.

R156-17a-315. Renewal Cycle—Procedures.

—(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 17a is established by rule in Section R156-1-308.

—(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-17a-502. Unprofessional Conduct.

—"Unprofessional conduct" includes:

—(1) violating any provision of the American Pharmaceutical Association Code of Ethics, October 1994, which is hereby incorporated by reference;

—(2) failing to comply with the Food and Drug Administration Compliance Policy Guideline 460.200, March 16, 1992, which is hereby incorporated by reference;

—(3) failing to comply with the continuing education requirements set forth in these rules;

—(4) failing to provide the division with a current mailing address within a reasonable period of time following any change of address;

—(5) defaulting on a student loan;

—(6) failing to abide by all applicable federal and state law regarding the practice of pharmacy; and

—(7) failing to comply with administrative inspections.

R156-17a-601. Operating Standards—Pharmacy Technician—Scope of Practice.

—In accordance with Subsection 58-17a-102(42), the scope of practice of a pharmacy technician is defined as follows:

—(1) The pharmacy technician may perform any task associated with the physical preparation and processing of prescription and medication orders including:

—(a) receiving written prescriptions;

—(b) taking refill orders;

—(c) entering and retrieving information into and from a database, or patient profile;

—(d) preparing labels;

—(e) retrieving medications from inventory;

—(f) counting and pouring into containers;

—(g) placing medications into patient storage containers;

—(h) affixing labels;

—(i) compounding; and

—(j) other non-judgmental tasks.

—(2) The pharmacy technician shall not receive new oral prescriptions or medication orders nor perform drug utilization reviews.

—(3) The licensed pharmacist on duty can at his discretion provide general supervision as defined in Subsection 58-17a-102(17) to no more than three pharmacy technicians, only one of which can be an unlicensed technician, who are actually on duty at any one time.

R156-17a-602. Operating Standards—Pharmacy Intern—Scope of Practice.

—In accordance with Subsections 58-17a-102(41) and 58-17a-102(41), the scope of practice of a pharmacy intern includes the following:

—(1) If a pharmacy intern ceases to meet all requirements for intern licensure, he shall surrender his pharmacy intern license to the division within 60 days unless an extension is requested and granted by the Division in collaboration with the Board.

—(2) A pharmacy intern may act as a pharmacy intern only under the supervision of an approved preceptor as set forth in Subsection 58-17a-102(45) and Section R156-17a-603.

R156-17a-603. Operating Standards—Approved Preceptor.

—In accordance with Subsection 58-17a-601(1), the following shall apply to an approved preceptor:

—(1) He may supervise more than one intern, however, a preceptor may supervise only one intern actually on duty in the practice of pharmacy at any one time.

—(2) He shall maintain adequate records to demonstrate the number of internship hours completed by the intern and an evaluation of the quality of the intern's performance during the internship.

—(3) The preceptor shall complete the preceptor section of a "Utah Pharmacy Intern Experience Affidavit" at the conclusion of the preceptor/intern relationship regardless of the time or circumstances under which that relationship is concluded and provide that affidavit to the division.

—(4) The preceptor shall be responsible for the intern's acts related to the practice of pharmacy while practicing as a pharmacy intern under his or her supervision.

—(5) The preceptor shall use "The Internship Experience, A Manual for Pharmacy Preceptors and Interns", August 1980, published by the NABP or an equivalent manual while providing the intern experience for the intern.

R156-17a-604. Operating Standards—Supportive Personnel.

—(1) In accordance with Subsection 58-17a-102(50)(a), the duties of supportive personnel are further defined as follows:

—(a) Supportive personnel may assist in any tasks not related to drug preparation or processing including:

—(i) stock ordering and restocking;

—(ii) cashiering;

—(iii) billing;

—(iv) filing;

—(v) housekeeping; and

—(vi) delivery.

—(b) Supportive personnel shall not enter information into a patient profile nor accept refill information.

—(2) In accordance with Subsection 58-17a-102(50)(b), the supervision of supportive personnel is defined as follows:

—(a) All supportive personnel shall be under the supervision of a licensed pharmacist.

—(b) The licensed pharmacist shall be present in the area where the person being supervised is performing services and shall be immediately available to assist the person being supervised in the services being performed.

—(3) In accordance with Subsection 58-17a-601(1), a pharmacist, pharmacy intern, or pharmacy technician whose license has been revoked or is suspended shall not be allowed to provide any support services in a pharmacy.

R156-17a-605. Operating Standards—Medication Profile System.

— In accordance with Subsections 58-17a-601(1) and 58-17a-604(1), the following operating standards shall apply with respect to medication profile systems:

— (1) Patient profiles, once established, shall be maintained by a pharmacist in a pharmacy dispensing to patients on a recurring basis for a minimum of one year from the date of the most recent prescription filled or refilled; except that a hospital pharmacy may delete the patient profile for an inpatient upon discharge if a record of prescriptions is maintained as a part of the hospital record.

— (2) Information to be included in the profile shall be determined by a responsible pharmacist at the drug outlet but shall include as a minimum:

— (a) full name of patient, address, telephone number, date of birth or age and gender;

— (b) patient history where significant, including known allergies and drug reactions, and a comprehensive list of medications and relevant devices;

— (c) a list of all prescription drugs obtained by the patient at the pharmacy including:

— (i) name of prescription drug;

— (ii) strength of prescription drug;

— (iii) quantity dispensed;

— (iv) date of filling or refilling;

— (v) charge for the prescription drug as dispensed to the patient; and

— (d) any additional comments relevant to the patient's drug use.

— (3) Patient medication profile information shall be recorded by a pharmacist, pharmacy intern, or pharmacy technician.

R156-17a-606. Operating Standards—Patient Counseling.

— In accordance with Subsection 58-17a-601(1), standards for patient counseling established in Section 58-17a-612 include the following:

— (1) Patient counseling shall include when appropriate the following elements:

— (a) the name and description of the prescription drug;

— (b) the dosage form, dose, route of administration, and duration of drug therapy;

— (c) intended use of the drug and expected action;

— (d) special directions and precautions for preparation, administration, and use by the patient;

— (e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

— (f) techniques for self-monitoring drug therapy;

— (g) proper storage;

— (h) prescription refill information;

— (i) action to be taken in the event of a missed dose;

— (j) pharmacist comments relevant to the individual's drug therapy, including any other information peculiar to the specific patient or drug; and

— (k) the date after which the prescription should not be taken or used.

— (2) Patient counseling shall not be required for inpatients of a hospital or institution where other licensed health care professionals are authorized to administer the drugs.

— (3) A pharmacist shall not be required to counsel a patient or patient's agent when the patient or patient's agent refuses such consultation.

— (4) The offer to counsel shall be documented and said documentation shall be available to the division and the board.

R156-17a-607. Operating Standards—Prescriptions.

— In accordance with Subsection 58-17a-601(1), the following shall apply to prescriptions:

— (1) A prescription issued by an authorized licensed practitioner, if communicated by an agent or employee of that practitioner upon that practitioner's specific instruction and authorization, may be accepted by a pharmacist or pharmacy intern.

— (2) Prescription files, including refill information, shall be maintained for a minimum of five years by either a manual filing of written prescriptions or by permanent electronic record.

— (3) Prescriptions having a remaining authorization for refill may be transferred by the pharmacist at the outlet holding the prescription to a pharmacist at another outlet upon the authorization of the patient to whom the prescription was issued. The transferring pharmacist and receiving pharmacist shall act diligently to ensure that the total number of authorized refills is not exceeded.

— (4) Prescriptions for terminal patients in licensed hospices, home health agencies, or nursing homes may be partially filled if the patient has a medical diagnosis documenting a terminal illness.

R156-17a-608. Operating Standards—Pharmacist in charge.

— All drug outlets, except pharmaceutical manufacturers and pharmaceutical wholesaler/distributors, and all pharmaceutical administration facilities shall have a pharmacist in charge.

R156-17a-609. Operating Standards—Branch Pharmacy.

— In accordance with Section 58-17a-614, the operating standards for branch pharmacies include the following:

— (1) Branch pharmacies may be staffed only by the following persons holding current licenses to practice:

— (a) physicians and surgeons;

— (b) osteopathic physicians and surgeons;

— (c) advanced practice registered nurses; and

— (d) physician assistants.

— (2) Prescription drugs supplied to the branch pharmacy by the parent pharmacy shall be prepackaged having a label affixed to the container by a licensed pharmacist at the parent pharmacy. The label shall contain all information required by law on a prescription label except the date dispensed, identifying information concerning the patient, specific dosage instructions and identification of the dispensing person. Excepted information shall be added to the label by a branch pharmacy person in one of the licensure classifications listed above at the time the prescription drug is dispensed.

— (3) The branch pharmacy shall be personally visited by the supervising pharmacist or his designee who is also a licensed Utah pharmacist not less than once in each month for the purpose of auditing the prescription drug inventory and branch pharmacy procedures against the approved protocol. A record of each visit and the findings shall be maintained at the branch pharmacy and at the parent pharmacy.

— (4) The parent pharmacy shall notify the division in writing and receive approval for any change in branch pharmacy licensure qualifications or operating standards.

R156-17a-610. Operating Standards—Drug Outlets.

— In accordance with Subsection 58-17a-601(1), standards for the operations of drug outlets include the following:

—(1) Any drug outlet licensed under the Pharmacy Practice Act, Title 58, Chapter 17a, shall be well lighted, well ventilated, clean and sanitary.

—(2) The dispensing area, if any, shall have a sink with hot and cold culinary water separate and apart from any rest room facilities.

—(3) The drug outlet shall be equipped to permit the orderly storage of prescription drugs and devices in a manner to permit clear identification, separation, and easy retrieval of products, and an environment necessary to maintain the integrity of the product inventory.

—(4) The drug outlet shall be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice to be conducted within that facility.

—(5) The drug outlet shall be stocked with the quality and quantity of product necessary for the facility to meet its scope of practice in a manner consistent with the public health, safety and welfare.

—(6) The drug outlet shall be equipped with a security system to permit detection of entry at all times when the facility is closed.

—(7) Drug outlets engaged in extensive compounding activities shall be required to maintain proper records and procedure manuals and establish quality control measures to ensure stability, equivalency where applicable and sterility.

—(8) The drug outlet shall have recent editions of the following reference publications in such quantity and in such places as to make them readily available to facility personnel:

—(a) the Utah Pharmacy Practice Act;

—(b) the Utah Pharmacy Practice Act Rules;

—(c) the Utah Controlled Substance Act;

—(d) the Utah Controlled Substance Act Rules;

—(e) Code of Federal Regulations (CFR) 21, Food and Drugs, Part 1300 to end or equivalent such as the USPD;

—(f) current FDA Approved Drug Products (orange book);

—(g) any other general drug references necessary to permit practice dictated by the usual and ordinary scope of practice to be conducted within that facility; and

—(h) "The Intern Experience, A Manual for Pharmacy Preceptors and Interns", August 1980, published by the National Association of Boards of Pharmacy, if pharmacy interns are present.

—(9) The drug outlet shall post in view of the public the license of the facility and the license or a copy of the license of each pharmacist, pharmacy intern, and pharmacy technician who is employed in the facility, but may not post the license of any pharmacist, pharmacy intern, or pharmacy technician not actually employed in the facility.

—(10) Drug outlets initially licensed or substantially remodeled on or after September 1, 1992, shall have a counseling area to allow for confidential patient counseling, when appropriate.

—(11) If the pharmacy is located within a larger facility such as a grocery or department store, and a licensed Utah pharmacist is not immediately available in the facility, the pharmacy shall not remain open to pharmacy patients and shall be locked in such a way as to bar entry to the public or any non-pharmacy personnel.

—(12) All pharmacies located within a larger facility shall be locked and enclosed in such a way as to bar entry to the public or any non-pharmacy personnel when the pharmacy is closed.

—(13) Only a licensed Utah pharmacist or his designee shall have access to the pharmacy when the pharmacy is closed.

~~R156-17a-611. Operating Standards—Nuclear Pharmacy.~~

—In accordance with Subsections 58-17a-303(4)(d) and 58-17a-601(1), the operating standards for nuclear pharmacies include the following:

—(1) A nuclear pharmacy shall have the following:

—(a) a current Utah Radioactive Materials License; and

—(b) adequate space and equipment commensurate with the scope of services required and provided.

—(2) Nuclear pharmacies shall only dispense radiopharmaceuticals which comply with acceptable standards of quality assurance.

—(3) Nuclear pharmacies shall maintain a library commensurate with the level of radiopharmaceutical service to be provided.

—(4) A licensed Utah pharmacist shall be immediately available on the premises at all times when the facility is open or available to engage in the practice of pharmacy.

—(5) In addition to Utah licensure, the pharmacist shall be currently certified by the Board of Pharmaceutical Specialties in Nuclear Pharmacy or have equivalent classroom and laboratory training and experience as required by the Utah Radiation Control Rules.

—(6) This rule does not prohibit:

—(a) a licensed pharmacy intern or technician from acting under the direct supervision of an approved preceptor who meets the requirements to supervise a nuclear pharmacy; or

—(b) a Utah Radioactive Materials licensee from possessing and using radiopharmaceuticals for medical use.

—(7) A hospital nuclear medicine department or an office of a physician/surgeon, osteopathic physician/surgeon, veterinarian, podiatric physician, or dentist that has a current Utah Radioactive Materials License does not require licensure as a nuclear pharmacy.

~~R156-17a-612. Operating Standards—Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer located in Utah.~~

—In accordance with Subsection 58-17a-601(1), the operating standards for pharmaceutical wholesaler/distributor and pharmaceutical manufacturer licensee includes the following:

—(1) A separate license shall be obtained for each separate location engaged in the distribution or manufacturing of prescription drugs.

—(2) A separate license shall be obtained for wholesale distribution activity and manufacturing activity.

—(3) The licensee need not be under the supervision of a licensed pharmacist, but shall be under the supervision of a responsible officer or management employee.

—(4) There has not been established minimum requirements for persons employed by persons engaged in the distribution or manufacture of prescription drugs; however, this does not relieve the person who engages in the distribution of prescription drugs within the state or in interstate commerce into or from the state, or those engaged in the manufacture of prescription drugs in the state or in interstate commerce into or from the state from ensuring that persons employed by them have appropriate education, experience, or both to engage in the duties to which they are assigned and do so in a manner which does not jeopardize the public health, safety or welfare.

~~—(5) All facilities associated with the distribution or manufacture of prescription drugs shall:~~

~~—(a) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;~~

~~—(b) have storage areas designed to provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;~~

~~—(c) have the ability to control temperature and humidity within tolerances required by all prescription drugs and prescription drug precursors handled or used in the distribution or manufacturing activities of the applicant or licensee;~~

~~—(d) provide for a quarantine area for storage of prescription drugs and prescription drug precursors that are outdated, damaged, deteriorated, misbranded, adulterated, opened or unsealed containers that have once been appropriately sealed or closed, or in any other way unsuitable for use or entry into distribution or manufacture;~~

~~—(e) be maintained in a clean and orderly condition, and~~

~~—(f) be free from infestation by insects, rodents, birds, or vermin of any kind.~~

~~—(6) In regard to security, all facilities used for wholesale drug distribution or manufacturing of prescription drugs shall:~~

~~—(a) be secure from unauthorized entry;~~

~~—(b) limit access from the outside to a minimum in conformance with local building and life/safety codes, and control access of persons to ensure unauthorized entry is not made;~~

~~—(c) limit entry into areas where prescription drugs or prescription drug precursors are held to authorized persons who have a need to be in those areas;~~

~~—(d) be well lighted on the outside perimeter;~~

~~—(e) be equipped with an alarm system to permit detection of entry and notification to appropriate authorities at all times when the facility is not occupied for the purpose of engaging in distribution or manufacture of prescription drugs; and~~

~~—(f) be equipped with security measures, systems and procedures necessary to provide reasonable security against theft and diversion of prescription drugs or alteration or tampering with computers and records pertaining to prescription drugs or prescription drug precursors.~~

~~—(7) In regard to storage, all facilities shall provide for storage of prescription drugs and prescription drug precursors in accordance with the following:~~

~~—(a) all prescription drugs and prescription drug precursors shall be stored at appropriate temperature, humidity and other conditions in accordance with labeling of such prescription drugs or prescription drug precursors or with requirements in the United States Pharmacopeia/National Formulary (USP/NF), 2003 edition, which is official from January 1, 2004 through Supplement 2, dated August 1, 2003, which is hereby incorporated by reference;~~

~~—(b) if no storage requirements are established for a specific prescription drug or prescription drug precursor, the products shall be held in a condition of controlled temperature and humidity as defined in the USP/NF to ensure that its identity, strength, quality, and purity are not adversely affected; and~~

~~—(c) there shall be established a system of manual, electromechanical or electronic recording of temperature and humidity in the areas in which prescription drugs or prescription drug precursors are held to permit review of the record and ensure that the products have not been subjected to conditions which are outside of established limits.~~

~~—(8) In regard to examination of materials, each facility shall provide that:~~

~~—(a) upon receipt, each outside shipping container containing prescription drugs or prescription drug precursors shall be visually examined for identity and to prevent the acceptance of prescription drugs or prescription drug precursors that are contaminated, reveal damage to the containers or are otherwise unfit for distribution; and~~

~~—(b) each outgoing shipment shall be carefully inspected for identity of the prescription drug products and to ensure that there is no delivery of prescription drugs that have been damaged in storage or held under improper conditions.~~

~~—(9) In regard to returned, damaged, and outdated prescription drugs, each facility shall provide that:~~

~~—(a) prescription drugs or prescription drug precursors that are outdated, damaged, deteriorated, misbranded, adulterated, or in any other way unfit for distribution or use in manufacturing shall be quarantined and physically separated from other prescription drugs or prescription drug precursors until they are appropriately destroyed or returned to their supplier;~~

~~—(b) any prescription drug or prescription drug precursor whose immediate sealed or outer secondary sealed container has been opened or in any other way breached shall be identified as such and shall be quarantined and physically separated from other prescription drugs and prescription drug precursors until they are appropriately destroyed or returned to their supplier; and~~

~~—(c) if the condition or circumstances surrounding the return of any prescription drug or prescription drug precursor cast any doubt on the product's safety, identity, strength, quality, or purity, then the drug shall be appropriately destroyed or returned to the supplier, unless examination, testing, or other investigation proves that the product meets appropriate and applicable standards related to the product's safety, identity, strength, quality, and purity.~~

~~—(10) In regard to record keeping, pharmaceutical wholesaler/distributors and pharmaceutical manufacturers shall establish and maintain records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and prescription drug precursors and shall make inventories of prescription drugs and prescription drug precursors and required records available for inspection by authorized representatives of the federal, state and local law enforcement agencies in accordance with the following:~~

~~—(a) there shall be a record of the source of the prescription drugs or prescription drug precursors to include the name and principal address of the seller or transferor, and the address of the location from which the drugs were shipped;~~

~~—(b) there shall be a record of the identity and quantity of the prescription drug or prescription drug precursor received, manufactured, distributed or shipped, or otherwise disposed of by specific product and strength;~~

~~—(c) there shall be a record of the dates of receipt and distribution or other disposal of any product;~~

~~—(d) there shall be a record of the identity of persons to whom distribution is made to include name and principal address of the receiver, and the address of the location to which the products were shipped;~~

~~—(e) inventories of prescription drugs and prescription drug precursors shall be made available during regular business hours to authorized representatives of federal, state and local law enforcement authorities;~~

~~—(f) required records shall be made available for inspection during regular business hours to authorized representatives of federal, state and local law enforcement authorities, and such records~~

shall be maintained for a period of two years following disposition of the products; and

— (g) records that are maintained on site or immediately retrievable from computer or other electronic means shall be made readily available for authorized inspection during the retention period; or if records are stored at another location, they shall be made available within two working days after request by an authorized law enforcement authority during the two year period of retention.

— (11) In regard to written policies and procedures, pharmaceutical wholesaler/distributors and pharmaceutical manufacturers shall establish, maintain, and adhere to written policies and procedures which shall be followed for the receipt, security, storage, inventory, manufacture, distribution or other disposal of prescription drugs or prescription drug precursors, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. In addition, the policies shall include the following:

— (a) a procedure whereby the oldest approved stock of a prescription drug or precursor product is distributed or used first, with a provision for deviation from the requirement if such deviation is temporary and appropriate;

— (b) a procedure to be followed for handling recalls and withdrawals of prescription drugs adequate to deal with recalls and withdrawals due to:

— (i) any action initiated at the request of the Food and Drug Administration of other federal, state or local law enforcement or other authorized administrative or regulatory agency;

— (ii) any voluntary action by the pharmaceutical wholesaler/distributor or pharmaceutical manufacturer to remove defective or potentially defective drugs from the market; or

— (iii) any action undertaken to promote public health, safety or welfare by replacing of existing product with an improved product or new package design;

— (c) a procedure to ensure that a pharmaceutical wholesaler/distributor or pharmaceutical manufacturer prepare for, protect against, and handle any crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state or national emergency;

— (d) a procedure to ensure that any outdated prescription drugs or prescription drug precursors shall be segregated from other drugs or precursors and either returned to the manufacturer, other appropriate party or appropriately destroyed;

— (e) a procedure providing for documentation of the disposition of outdated, adulterated or otherwise unsafe prescription drugs or prescription drug precursors and the maintenance of that documentation available for inspection by authorized federal, state, or local authorities for a period of two years after disposition of the product.

— (12) In regard to responsible persons, pharmaceutical wholesaler/distributors and pharmaceutical manufacturers shall establish, maintain and make available for inspection by authorized federal, state and local law enforcement authorities, lists of all officers, directors, managers, and other persons in charge of wholesale drug distribution, manufacture, storage, and handling, which lists shall include a description of their duties and a summary of their background and qualifications.

— (13) In regard to compliance with law, pharmaceutical wholesalers/distributors and pharmaceutical manufacturers shall:

— (a) operate in compliance with applicable federal, state and local laws and regulations;

— (b) permit the state licensing authority and authorized federal, state, and local law enforcement officials, upon presentation of proper credentials, to enter and inspect their premises and delivery vehicles, and to audit their records and written operating policies and procedures, at reasonable times and in a reasonable manner, to the extent authorized by law; and

— (c) obtain a controlled substance license from the division and register with the Drug Enforcement Administration (DEA) if they engage in distribution or manufacture of controlled substances, and shall comply with all federal, state and local regulations applicable to the distribution or manufacture of controlled substances.

— (14) In regard to salvaging and processing, pharmaceutical wholesalers/distributors and pharmaceutical manufacturers shall be subject to and shall abide by applicable federal, state and local laws that relate to the salvaging or reprocessing of prescription drug products.

— (15) A person who is engaged in the wholesale distribution or manufacturing of prescription drugs but does not have a facility located within Utah in which prescription drugs are located, stored, distributed or manufactured is exempt from Utah licensure as a pharmaceutical wholesaler/distributor or a pharmaceutical manufacturer, if said person is currently licensed and in good standing in each state of the United States in which that person has a facility engaged in distribution or manufacturing of prescription drugs entered into interstate commerce.

~~R156-17a-613. Operating Standards—Animal Euthanasia Agency.~~

— In accordance with Subsection 58-17a-601(1), operating standards for an animal euthanasia agency concerning the use of prescription drugs shall include:

— (1) A veterinarian licensed in Utah shall supervise the use of prescription drugs used for animal euthanasia.

— (2) The veterinarian shall be responsible for:

— (a) identifying each euthanasia drug for which authorization is requested;

— (b) identifying the location where euthanasia drugs and records will be maintained;

— (c) identifying each person to be authorized to purchase, possess, or administer euthanasia drugs;

— (d) describing the training program for each person authorized to purchase, possess, or administer euthanasia drugs as well as attesting to be responsible for that training; and

— (e) maintaining euthanasia drug records.

~~R156-17a-614. Operating Standards—Analytical Laboratory.~~

— In accordance with Subsection 58-17a-601(1), operating standards for an analytical laboratory concerning the use of prescription drugs shall include:

— (1) the supervising laboratory director is identified; and

— (2) the protocols describing how authorized prescription drugs will be purchased, stored, used, and accounted for are available for division inspection.

~~R156-17a-615. Operating Standards—Pharmaceutical Researcher.~~

— In accordance with Subsection 58-17a-601(1), operating standards for a pharmaceutical researcher concerning the use of prescription drugs shall include:

—(1) requesting and receiving authorization for each drug to be bought or used; and

—(2) the protocols describing how authorized prescription drugs will be purchased, stored, used, and accounted for are available for division inspection.

~~R156-17a-616. — Operating Standards — Pharmaceutical Dog Trainer.~~

— In accordance with Subsection 58-17a-601(1), operating standards for a pharmaceutical dog trainer concerning the use of prescription drugs shall include:

—(1) affiliation with a law enforcement official from a Utah law enforcement agency who is responsible for the purchase, storage, and use of the authorized prescription drugs;

—(2) requesting and receiving authorization for each drug to be bought or used; and

—(3) the protocols describing how authorized prescription drugs will be purchased, stored, used, and accounted for are available for division inspection.

~~R156-17a-617. — Operating Standards — Issuing Prescription Orders by Electronic Means.~~

— In accordance with Subsection 58-17a-102(46), prescription orders may be issued by electronic means of communication according to the following:

—(1) Prescription orders for Schedule II–V controlled substances received by electronic means of communication shall be handled according to the rules of the federal Drug Enforcement Administration.

—(2) Prescription orders for nonecontrolled substances received by electronic means of communication may be dispensed by a pharmacist or pharmacy intern only if all of the following conditions are satisfied:

—(a) All electronically transmitted prescription orders shall include the following:

—(i) all information that is required to be contained in a prescription order pursuant to Section 58-17a-602;

—(ii) the time and date of the transmission, and if a facsimile transmission, the electronically encoded date, time, and fax number of the sender; and

—(iii) the name of the pharmacy intended to receive the transmission.

—(b) The prescription order shall be transmitted by an authorized prescriber or his designated agent.

—(c) The pharmacist shall exercise professional judgment regarding the accuracy and authenticity of the transmitted prescription. The pharmacist is responsible for assuring that each electronically transferred prescription order is valid and shall authenticate a prescription order issued by a licensed prescriber which has been transmitted to the dispensing pharmacy before filling it, whenever there is a question.

—(d) An electronically transmitted prescription order that meets the requirements above shall be deemed to be the original prescription.

—(3) This section does not apply to the use of electronic equipment to transmit prescription orders within inpatient medical facilities.

—(4) No agreement between a prescriber and a pharmacy shall require that prescription orders be transmitted by electronic means from the prescriber to only that pharmacy.

—(5) Wholesalers, distributors, manufacturers, pharmacists and pharmacies shall not supply electronic equipment to any prescriber for transmitting prescription orders.

—(6) An electronically transmitted prescription order shall be transmitted to the pharmacy of the patient's choice and shall be directed at the option of the patient.

—(7) Prescription orders electronically transmitted to the pharmacy by the patient shall not be filled or dispensed.

—(8) A prescription order may be transferred between pharmacies by computer but not by facsimile transmission. A prescription must be transmitted by facsimile from the site of origination to the dispensing pharmacy. Transmission by facsimile between pharmacies is not allowed except that a branch pharmacy may fax to its parent pharmacy.

~~R156-17a-618. — Operating Standards — Sterile Pharmaceuticals.~~

— In accordance with Subsection 58-17a-601(1), the following applies with respect to sterile pharmaceuticals:

—(1) Pharmacies in general acute hospitals as defined in Title 26 that prepare sterile pharmaceuticals shall conform to the Joint Commission on Accreditation of Healthcare Organization standards, the American Society of Health System Pharmacists guidelines, or other standards approved by the board and division.

—(2) The following standards shall apply to all other pharmacies preparing sterile pharmaceuticals:

—(a) Pharmacies are responsible for correct preparation of sterile products, notwithstanding the location of the patient. All sterile products must be prepared according to the current standards and ethics of the profession.

—(b) As a minimum each pharmacy preparing parenteral products shall:

—(i) prepare and maintain a policy and procedure manual for the compounding, dispensing and delivery of sterile pharmaceutical prescription drug orders including lot numbers of the components used in compounding sterile prescriptions except for large volume parenterals;

—(ii) have a laminar flow hood certified at least annually by an independent contractor;

—(iii) have appropriate disposal procedures and containers;

—(iv) have biohazard cabinetry when cytotoxic drug products are prepared;

—(v) have temperature controlled delivery container;

—(vi) have infusion devices, if appropriate;

—(vii) have supplies and other necessary resources adequate to maintain an environment suitable for the aseptic preparation of sterile products;

—(viii) have sufficient current reference materials related to sterile products to meet the needs of pharmacy staff; and

—(ix) have written procedures requiring sampling for microbial contamination.

—(c) The pharmacist in charge of each pharmacy preparing parenteral products shall assure that any compounded sterile pharmaceutical be shipped or delivered to a patient in appropriate temperature controlled delivery containers with appropriate monitors and stored appropriately in the patient's home. If appropriate, the pharmacist must demonstrate or document the patient's or patient's agent's training and competency in managing this type of therapy provided by the pharmacist to the patient in the home environment. A pharmacist must be involved in the patient's or patient's agent's training process in any area that relates to drug compounding, labeling, storage, stability, or incompatibility. The

pharmacist must be responsible for seeing that the patient's or patient's agent's competency in the above areas is reassessed on an ongoing basis.

~~R156-17a-619. — Operating Standards — Pharmaceutical Administration Facility.~~

~~— In accordance with Subsection 58-17a-601(1), the following applies with respect to prescription drugs which are held, stored, or otherwise under the control of a pharmaceutical administration facility for administration to patients:~~

~~— (1) The licensed pharmacist shall provide consultation on all aspects of pharmacy services in the facility; establish a system of records of receipt and disposition of all controlled substances in sufficient detail to enable an accurate reconciliation; and determine that drug records are in order and that an account of all controlled substances is maintained and periodically reconciled.~~

~~— (2) Authorized destruction of all prescription drugs shall be witnessed by the medical or nursing director or a designated physician or registered nurse employed in the facility and the supervising pharmacist and must be in compliance with DEA regulations.~~

~~— (3) Prescriptions for patients in the facility can be verbally requested by a licensed medical practitioner and may be entered as the physician's order; but, the practitioner must personally sign the order in the facility record within 72 hours, if a Schedule II controlled substance, and within 30 days if another prescription drug. The physician's verbal order may be copied and forwarded to a pharmacy for dispensing and may serve as the pharmacy's record of the prescription order.~~

~~— (4) Prescriptions for controlled substances for patients in pharmaceutical administration facilities shall be dispensed according to the Utah Controlled Substance Act, Title 58, Chapter 37, and the Controlled Substance Rules of the Division of Occupational and Professional Licensing, R156-37.~~

~~— (5) Emergency drug kit.~~

~~— (a) An emergency drug kit may be used by pharmaceutical administration facilities. The emergency drug kit shall be considered to be a physical extension of the pharmacy supplying the emergency drug kit and shall at all times remain under the ownership of that pharmacy.~~

~~— (b) The contents and quantity of drugs and supplies in the emergency drug kit shall be determined by the Medical Director or Director of Nursing of the pharmaceutical administration facility and the pharmacist in charge of the pharmacy.~~

~~— (c) A copy of the approved list of contents shall be conspicuously posted on or near the kit.~~

~~— (d) The emergency kit shall be used only for bona fide emergencies and only when medications cannot be obtained from a pharmacy in a timely manner.~~

~~— (e) Records documenting the receipt and removal of drugs in the emergency kit shall be maintained by the facility and the pharmacy.~~

~~— (f) The pharmacy shall be responsible for ensuring proper storage, security and accountability of the emergency kit and shall ensure that:~~

~~— (i) the emergency kit is stored in a locked area and is locked itself; and~~

~~— (ii) emergency kit drugs are accessible only to licensed physicians, physician assistants, and nurses employed by the facility.~~

~~— (g) The contents of the emergency kit, the approved list of contents, and all related records shall be made freely available and~~

open for inspection to appropriate representatives of the division and the Utah Department of Health.

~~R156-17a-620. — Operating Standards — Pharmacist Administration Training.~~

~~— (1) In accordance with Subsection 58-17a-502(9), appropriate training for the administration of a prescription drug includes:~~

~~— (a) having current BCLS certification; and~~

~~— (b) having successfully completed a training program which includes at a minimum:~~

~~— (i) didactic and practical training for administering injectable drugs;~~

~~— (ii) the current Advisory Committee on Immunization Practices (ACIP) of the United States Center for Disease Control and Prevention guidelines for the administration of immunizations; and~~

~~— (iii) the management of an anaphylactic reaction.~~

~~— (2) Sources for the appropriate training include:~~

~~— (a) ACPE approved programs;~~

~~— (b) curriculum-based programs from an ACPE accredited college of pharmacy; and~~

~~— (c) state or local health department programs.~~

KEY: pharmacists, licensing, pharmacies*

February 19, 2004

Notice of Continuation April 26, 2001

58-17a-101

58-37-1

58-1-106(1)(a)

58-1-202(1)(a)]



Commerce, Real Estate
R162-102-1
Application

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27797

FILED: 04/01/2005, 13:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Some applicants obtain permission to sit for the examination, and then do not do so for several years, by which time their prelicensing education has become outdated. In order to remedy this situation, the Utah Appraiser Licensing and Certification Board desires a limit on how long applicants have to take the examination once they have registered to sit for the examination.

SUMMARY OF THE RULE OR CHANGE: The permission granted by the Division of Real Estate to sit for an appraiser licensing or certification examination will only be valid for 24 months after issuance.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2-6(1)(l)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--State government is not affected by requiring appraiser applicants to sit for the licensing or certification examination within 24 months after seeking permission to do so.

❖ LOCAL GOVERNMENTS: None--Although local county assessors' offices do have appraisers on staff, a rule that requires appraiser candidates to take an examination within 24 months after seeking permission to do so should not cost or save local government. Appraiser candidates have control over this process; they should not seek permission to take the examination until they anticipate taking it within the next 24 months.

❖ OTHER PERSONS: The only other persons affected by this rule amendment are candidates for the appraiser licensing or certification examinations. They would not realize any savings because of this rule amendment. They could lose the fees (\$68) that they pay to obtain permission to sit for examinations if they don't follow through and take the examinations.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Candidates for the appraiser licensing and certification examinations could lose the fees (\$68) that they pay to obtain permission to sit for examinations if they don't follow through and take the examinations. However, these parties have control over the examination process; they should not seek permission to take an examination until they are ready to do so.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated as a result of this rule filing other than the loss of fees mentioned above for applicants who apply for approval to take the examination and then wait more than two years to do so. Russell C. Skousen, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at swismer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/16/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 05/17/2005

AUTHORIZED BY: Dexter Bell, Director

R162. Commerce, Real Estate.**R162-102. Application Procedures.****R162-102-1. Application.**

102.1.1 Initial Review - An applicant for licensure or certification as an appraiser will be required to submit, on forms provided by the Division, documentation indicating successful completion of the education and experience required by the state of Utah.

102.1.1.1 The application may be reviewed by an Appraiser Education Review Committee appointed by the Real Estate Appraiser Licensing and Certification Board to determine if the education requirement has been met.

102.1.1.2 The candidate will provide evidence of meeting the experience requirement by completing the form required by the Division.

102.1.1.3 The candidate will submit the appropriate license or certification fee at the time of submission of the education and experience forms.

102.1.2 Exam Application

102.1.2.1 Upon determining the candidate has completed the education and experience requirements, the Division will issue ~~an examination application form~~ to the candidate a form permitting the candidate to register to sit for the examination. The permission to register to sit for the examination shall be valid for twenty-four months after issuance, or twenty-four months after May 17, 2005, whichever is longer.

102.1.2.1.1 Effective January 1, 2003, as a prerequisite to sitting for the licensing/certification examination, the applicant will be required to submit proof of successful completion of the 15-hour National USPAP Course or its equivalent from an instructor or instructors, at least one of whom is a State-Certified Residential or State-Certified General Appraiser and has been certified by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. Equivalency to the 15-hour National USPAP Course will be determined through the Course Approval Program of the Appraiser Qualifications Board (AQB) of the Appraisal Foundation.

102.1.2.2 The candidate will make application to take the examination by returning the application form and the appropriate testing fee to the testing service designated by the Division. If the applicant fails to take the examination, the fee will be forfeited.

102.1.3 Final Application

102.1.3.1 Within 90 days after successful completion of the exam, the appraiser applicant must return to the Division each of the following:

102.1.3.1.1 A report from the testing service indicating successful completion of the exam.

102.1.3.1.2 The license application form required by the Division. The application form shall include the applicant's business and home addresses. A post office box without a street address is unacceptable as a business or home address. The applicant may designate either address to be used as a mailing address.

102.1.3.1.3 The fee for the federal registry.

KEY: real estate appraisals, licensing

~~December 2, 2002~~2005

Notice of Continuation March 27, 2002

61-2b-~~23~~6(1)(l)

Commerce, Real Estate
R162-107
Unprofessional Conduct

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE No.: 27788
 FILED: 04/01/2005, 08:44

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: It has come to the attention of the Division of Real Estate investigators that unlicensed persons are getting around appraiser licensing requirements by acting as trainees and accepting appraisal assignments (and payment for those assignments), doing the appraisals, and then hiring a properly licensed appraiser to sign their appraisal reports. Prohibiting a trainee from accepting an appraisal assignment and prohibiting the trainee from accepting payment for appraisal work from anyone other than his supervising appraiser should help to curb this abuse.

SUMMARY OF THE RULE OR CHANGE: Appraisals trainees would be forbidden from accepting appraisal assignments, and would be forbidden from being paid for their services performed in connection with appraisals by anyone other than their supervising appraisers or the supervisors' appraisal firms.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2b-6(1)(l)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None--A requirement that only the supervising appraiser may accept an appraisal assignment instead of the supervisor's trainee, and a requirement that a trainee may only receive payment from his supervisor will neither cost the State nor save the State on any appraisals it may order.

❖ **LOCAL GOVERNMENTS:** None--Local governments who use appraiser trainees in their assessors' offices would already pay those trainees through the "firm" (the local government). Appraisers who work for county assessors' offices do not solicit appraisal work in their capacity as government appraisers, and so the part of the rule regarding accepting appraisal assignments does not apply to trainees who work for local government agencies.

❖ **OTHER PERSONS:** The only persons affected by this rule change are supervising appraisers and their trainees. It is not anticipated that there will be either cost or savings from requiring that the trainee's compensation is paid to him by his supervisor. The trainee is already forbidden by the licensing law to appraise on his own, and therefore should not be accepting appraisal assignments anyway, and therefore the part of the rule forbidding the trainee from accepting assignments does not impose any new requirements on the supervisor or the trainee.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule amendment should not cost appraisers or appraiser trainees

any money since all the rule amendment does is clarify what the licensing law already requires: that it is the supervisor who must accept the appraisal assignment. It is not anticipated that requiring the trainee to be paid by his supervisor, as opposed to the party who pays for the appraisal, will impose any compliance costs on either the supervising appraiser or their trainees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing defines "unprofessional conduct" to include allowing a non-appraiser to accept an appraisal assignment and requires any payment to trainees to be made directly by the licensed supervisor. This definition is a further clarification of the existing provisions prohibiting unlicensed practice by trainees. Therefore, there is no anticipated fiscal impact to businesses as a result of this rule filing. Russell C. Skousen, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at swismer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/16/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 05/17/2005

AUTHORIZED BY: Dexter Bell, Director

R162. Commerce, Real Estate.
R162-107. Unprofessional Conduct.
R162-107-1. Unprofessional Conduct.

107.1 Unprofessional conduct includes the following specific acts or omissions:

107.1.1 Violating or disregarding a disciplinary order of the Utah Appraiser Licensing and Certification Board or the division;

107.1.2 Signing an appraisal report containing a statement indicating that an appraiser has inspected a property if the appraiser has not inspected the property;

107.1.3 Signing an appraisal report as the supervising appraiser without having given adequate supervision to the registered appraiser or the unclassified assistant;

107.1.4 Allowing an appraiser in his employ, or an appraiser whom he is otherwise responsible to supervise, to:

(a) exceed the authority of the subordinate appraiser's classification;

(b) engage in conduct which is a violation of Title 61, Chapter 2b.

107.1.5 Allowing a non-appraiser to:

(a) exceed the authority granted to an unclassified person by these rules;

(b) engage in conduct which would be a violation of Title 61, Chapter 2b if done by an appraiser; or

(c) accept an appraisal assignment.

107.1.6 Splitting appraisal fees with any person who is not a State-Licensed Appraiser or a State-Certified Appraiser, except that an appraisal trainee may be paid a reasonable salary or a reasonable hourly rate for lawful services actually performed in connection with appraisals. Such payment must be paid to the trainee by the trainee's supervisor or the supervisor's appraisal firm and not by any other person or entity.

107.2 The Board may appoint members of the appraisal industry to serve as a Technical Advisory Panel to provide advice to the Division concerning technical appraisal issues and conduct constituting unprofessional conduct.

KEY: real estate appraisals, conduct
~~[September 10, 2004]~~2005
 Notice of Continuation January 21, 2003
 61-2b-8



Education, Administration
R277-407
 School Fees

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 27798
 FILED: 04/01/2005, 17:11

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to eliminate inconsistencies between the Utah State Board of Education rule and Utah High School Activities Association (UHSAA) by-laws and rules. The amendment also removes responsibility from the State Board of Education for high school athletic eligibility requirements. It is necessary to remove all references to the UHSAA from this rule to allow the UHSAA to govern athletics and specified athletic eligibility in the high schools consistent with its own policies and by-laws.

SUMMARY OF THE RULE OR CHANGE: The amendment removes all references to the UHSAA.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-12-102(1)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated cost or savings to the state budget. The amendment removes references to the UHSAA thereby removing any conflicts that may have existed between the State Board of Education rule and UHSAA rules and by-laws but does not involve any funding.

❖ LOCAL GOVERNMENTS: There are no anticipated cost or savings to local government. The amendment removes references to the UHSAA thereby removing any conflicts that may have existed between the State Board of Education rule and UHSAA rules and by-laws but does not involve any funding.

❖ OTHER PERSONS: There are no anticipated cost or savings to other persons. The amendment removes references to the UHSAA thereby removing any conflicts that may have existed between the State Board of Education rule and UHSAA rules and by-laws but does not involve any funding.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The amendment simply removes references to the UHSAA and does not require any additional compliance requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/16/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 05/17/2005

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R277. Education, Administration.
R277-407. School Fees.
R277-407-4. School Activities Outside of the Regular School Day.

A. Fees may be charged, subject to the provisions of Section R277-407-6, in connection with any school-sponsored activity which does not take place during the regular school day, regardless of the age or grade level of the student, if participation is voluntary and does not affect a student's grade or ability to participate fully in any course taught during the regular school day.

B. Fees related to extracurricular activities [~~sponsored by the Utah High School Activities Association~~] may not exceed limits established by the [~~Association~~]local board. Schools shall collect these fees consistent with [~~school district~~]local board policies and state law.

R277-407-5. General Provisions.

A. No fee may be charged or assessed in connection with any class or school-sponsored or supported activity, including extracurricular activities, unless the fee has been set and approved by the local board of education and distributed in an approved fee schedule or notice in accordance with this rule.

B. Fee schedules and policies for the entire district shall be adopted at least once each year by the local board of education in a regularly scheduled public meeting of the local board. Provision shall be made for broad public notice and participation in the development of fee schedules and waiver policies. Minutes of local board meetings during which fee and waiver policies are developed or adopted, together with copies of approved policies, shall be kept on file by the local board of education and made available upon request.

C. Each district local board shall adopt procedures to reasonably ensure that the parent or guardian of each child who attends school within the district receives written notice of all current and applicable fee schedules and fee waiver policies, including easily understandable procedures for obtaining waivers and for appealing a denial of waiver, as soon as possible prior to the time when fees become due. Copies of the schedules and waiver policies shall be included with all registration materials provided to potential or continuing students.

D. No present or former student may be denied receipt of transcripts or a diploma for failure to pay school fees. A reasonable charge may be made to cover the cost of duplicating or mailing transcripts and other school records. No charge may be made for duplicating or mailing copies of school records to an elementary or secondary school in which the student is enrolled or intends to enroll.

E. To preserve equal opportunity for all students and to limit diversion of money and school and staff resources from the basic school program, each district's local board's fee policies shall be designed to limit student expenditures for school-sponsored activities, including expenditures for activities, uniforms, clubs, clinics, travel, and subject area and vocational leadership organizations, whether local, state, or national.

F. Donations or contributions may be solicited and accepted in accordance with district local board policies, but all such requests must clearly state that donations and contributions are voluntary. A donation is a fee if a student must be required to make a donation in order to participate in an activity.

G. In the collection of school fees, districts must local boards shall comply with statutes and State Tax Commission rules regarding the collection of state sales tax.

R277-407-6. Waivers.

A. A local board of education shall provide, as part of any fee policy or schedule, for adequate waivers or other provisions in lieu of fee waivers to ensure that no student is denied the opportunity to participate in a class or school-sponsored or supported activity because of an inability to pay a fee.

The waiver policy shall include procedures to ensure that:

(1) a person is designated in each school to administer the policy and grant waivers;

(2) the process for obtaining waivers or pursuing alternatives is administered fairly, objectively, and without delay, and avoids stigma and unreasonable burdens on students and parents;

(3) students who have been granted waivers or provisions in lieu of fee waivers are not treated differently from other students or identified to persons who do not need to know;

(4) fee waivers or other provisions in lieu of fee waivers are available to any student whose parent is unable to pay the fee in question;

(5) Eligibility

(a) inability to pay is presumed for those who are in state custody or foster care, or receiving public assistance in the form of Aid to Families with Dependent Children, or Supplemental Security Income, or are eligible for free school lunch; and

(b) CASE BY CASE DETERMINATIONS ARE MADE FOR THOSE WHO DO NOT QUALIFY UNDER ONE OF THE FOREGOING STANDARDS but who, because of extenuating circumstances such as, but not limited to, exceptional financial burdens such as loss or substantial reduction of income or extraordinary medical expenses, are not reasonably capable of paying the fee;

(6) textbook fees are waived for all eligible students in accordance with Sections 53A-12-201 and 53A-12-204 of the Utah Code and this Section;

(7) parents are given the opportunity to review proposed alternatives to fee waivers;

(8) a timely appeal process is available, including the opportunity to appeal to the local board or its designee;

(9) any requirement that a given student pay a fee is suspended during any period during which the student's eligibility for waiver is being determined or during which a denial of waiver is being appealed; and

(10) the local board provides for balancing of financial inequities among district schools so that the granting of waivers and provisions in lieu of fee waivers do not produce significant inequities through unequal impact on individual schools.

B. Expenditures for uniforms, costumes, clothing, and accessories, other than items of typical student dress, which are required for participation in choirs, pep clubs, drill teams, athletic teams, bands, orchestras, and other student groups, and expenditures for student travel as part of a school team, student group, or other school-approved trip, are fees requiring approval of the local board of education, and are subject to the provisions of this section.

C. The requirements of fee waiver and availability of other provisions in lieu of fee waiver do not apply to charges assessed pursuant to a student's damaging or losing school property. Schools may pursue reasonable methods for obtaining payment for such charges, but may not exclude students from school or withhold UNOFFICIAL transcripts or diplomas to obtain payment of those charges, consistent with Section 53A-11-806(2), and the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 USC 1232g, which regulation is hereby incorporated by reference within this rule.

D. Charges for class rings, letter jackets, and similar articles not required for participation in a class or activity are not fees and are not subject to the waiver requirements.

R277-407-7. Fee Waiver Reporting Requirements.

Beginning with fiscal year 1990-91, each school district shall attach to its annual S-3 statistical report for inclusion in the State Superintendent of Public Instruction's annual report the following:

- (1) a summary of the number of students in the district given fee waivers, the number of students who worked in lieu of a waiver, and the total dollar value of student fees waived by the district;
- (2) a copy of the ~~[district's]~~local board's fee and fee waiver policies;
- (3) a copy of the ~~[district's]~~local board's fee schedule for students; and
- (4) the notice of fee waiver criteria provided by the district to a student's parent or guardian.

KEY: education, educational tuition[s], education finance
[1994]2005

Notice of Continuation September 12, 2002

Art X Sec 3

53A-12-102

53A-12-201

53A-12-204

53A-11-806(2)



Education, Administration **R277-437** Student Enrollment Options

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 27799
 FILED: 04/01/2005, 17:11

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to eliminate inconsistencies between the Utah State Board of Education rule and the Utah High School Activities Association (UHSAA) by-laws and rules. The amendment also removes responsibility from the State Board of Education for high school athletic eligibility requirements. It is necessary to remove all references to the UHSAA from this rule to allow the UHSAA to govern athletics and specified athletic eligibility in the high schools consistent with its own policies and by-laws.

SUMMARY OF THE RULE OR CHANGE: The amendment removes all references to the UHSAA.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 53A-2-207 through 53A-2-213

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There are no anticipated cost or savings to the state budget. The amendment removes references to the UHSAA thereby removing any conflicts that may have existed between the State Board of Education rule and UHSAA rules and by-laws but does not involve any funding.
- ❖ LOCAL GOVERNMENTS: There are no anticipated cost or savings to local government. The amendment removes references to the UHSAA thereby removing any conflicts that may have existed between the State Board of Education rule and UHSAA rules and by-laws but does not involve any funding.

❖ OTHER PERSONS: There are no anticipated cost or savings to other persons. The amendment removes references to the UHSAA thereby removing any conflicts that may have existed between the State Board of Education rule and UHSAA rules and by-laws but does not involve any funding.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The amendment simply removes references to the UHSAA and does not require any compliance requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/16/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 05/17/2005

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R277. Education, Administration. **R277-437. Student Enrollment Options.** **R277-437-1. Definitions.**

A. "Available school or program" means a school or program currently designated under this rule by a district as open to nonresident students.

B. "Average daily membership threshold" means 90% of the maximum capacity of a school.

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

[~~C~~]D. "Core class" means a class specifically required as part of the Core Curriculum established by the Board under R277-700-11.

[~~D~~]E. "District of residence" means a student's school district of residence under Section 53A-2-201.

[~~E~~]E. "Instructional station" means a classroom, laboratory, shop, study hall, or physical education facility to which a local board of education has assigned a class, teacher or program during a given class period. For example, if two P.E. classes were assigned to meet in the gymnasium simultaneously, the gymnasium would represent two instructional stations.

[F]G. "Nonresident district" means a school district other than the district of residence of the student in question.

[G]H. "Nonresident student" means a student attending or seeking to attend a school other than the school of residence.

[H]I. "Projected average daily membership" means the current year enrollment of a school as of October 1, adjusted for projected growth for the coming school year.

[I]J. "Residual per student expenditure" means the expenditure based on the most recent State Superintendent's Annual Report according to the following formula:

- (1) Take total expenditures before interfund transfer for:
 - (a) maintenance and operation;
 - (b) tort liability; and
 - (c) capital projects.
- (2) Subtract from the sum of (1), above:
 - (a) resident district's taxes collected under the Minimum School Program;
 - (b) state revenue;
 - (c) federal revenue; and
 - (d) expenditures for site acquisition or new facility construction (new facility construction includes remodeling that increases building square footage or other major remodeling, if approved by the USOE Director of Finance).
- (3) Divide the remainder of (1) and (2) above by the total student membership of the district as reported in the most recent State Superintendent's Annual Report.

[J]K. "School capacity" or "maximum capacity" means the total number of students who could be served in a given school building if each of the building's instructional stations were to serve at least the following number of students:

- (1) kindergarten: 10 students per room, per session -- typically two one-half day sessions per day;
- (2) grades one through three: 15 students per room;
- (3) grades four through six: 20 students per room;
- (4) junior high and middle school: 20 students per Core class;
- (5) junior high/senior high combinations: 20 students per Core class;
- (6) senior high: 20 students per Core class;
- (7) instructional station capacity for laboratories, physical education facilities, shops, study halls, self-contained special education classrooms, facilities jointly financed by school districts and another community agency for joint use and similar rooms must be calculated individually. Capacity for self-contained special education classrooms shall be based upon students per class as defined by Board and federal special education standards. (The above standards are based upon the UTAH STATE PUBLIC EDUCATION STRATEGIC PLAN, January 1992, page 19; and Section 53A-17a-124.5)

[K]L. "School of residence" means the school which a student would normally attend in the student's district of residence.

[L]M. "Serious infraction of the law or school rules" means any behavior which could, under rules of the nonresident district in which enrollment is sought, subject a student to suspension for more than ten days or expulsion.

~~M. "UHSAA" means the Utah High School Activities Association.~~

N. "USOE" means the Utah State Office of Education.

R277-437-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public

school system under the Board, by 53A-1-402(1)(b) which directs the ~~[Utah State] Board [of Education]~~ to establish rules and minimum standards for access to programs and by 53A-2-207 through 213 which directs the Board to develop rules for student enrollment options.

B. The purpose of this rule is to provide: definitions relating to school choice; standards for transferring students; rules for participation in interscholastic competition; a form for students to use when applying for open enrollment; and an explanation for use of the form, "Application for Student to Attend School in Nonresident School or District," in seeking permission for a student to attend school in a school other than the school of residence.

R277-437-3. Local School Board and District Responsibilities.

A. Prior to November 30 of each school year a local board shall announce policies describing procedures for students to follow in applying to attend schools other than their respective schools of residence, and designate which schools and programs will be available for open enrollment during the coming school year.

(1) A local board shall designate each school which has a projected daily membership below the average daily membership threshold as available for open enrollment, and may designate schools as available even though projected daily membership exceeds threshold levels.

(2) If construction, remodeling, or other circumstances beyond the control of the local board do not reasonably permit the local board to make sufficiently accurate enrollment projections for a given school to determine whether the school should be designated as available for open enrollment for the coming year, the local board shall permit submission of enrollment applications for that school during the application period and notify applicants that approval will be delayed until additional information is available.

(3) Whether applications are received for schools designated as open, or for schools for which the local board was unable to make a designation, the local board must give applicants written notification of acceptance or rejection of their applications by March 1 (for new nonresident students) or March 15 (for current nonresident students).

B. As required under Subsection 53A-2-210(2), a resident district shall pay to a nonresident district one-half of the resident district's residual per student expenditure for each resident student properly registered in the nonresident district.

C. A district shall allow an enrolled nonresident student to remain enrolled in the district, subject to the conditions noted under Subsections 53A-2-207(6) and (7), provided:

(1) if a nonresident student is to be excluded from continued enrollment in a school because current or projected resident student enrollment meets or exceeds maximum school capacities, and there is another school which the student could attend within the district which has not reached maximum enrollment, the nonresident student shall be given the opportunity to enroll in that school.

(2) nonresident students who must be relocated under Subsection (1) due to increased enrollment of resident students, and siblings of nonresident students who are currently attending a school within the district, shall have priority in enrollment over other nonresident students who are seeking enrollment in the district for the first time.

(3) a school district may designate the schools which students shall attend as they move from elementary school to middle school to high school. Attendance at a specific elementary, junior high or middle school does not guarantee attendance at a specific junior high or high school.

D. Each local board shall establish a procedure to consider appeals of any denial of initial or continued enrollment of a nonresident student under Subsection 53A-2-209(1).

E. A local board of education may limit open enrollment options when they negatively affect the capacity, programs, class size, grade levels or school buildings of the resident or the receiving school.

~~][R277-437-4. Student Participation in Interscholastic Competition.~~

~~— A. A student in the ninth grade or above who transfers between schools shall be ineligible for varsity level interscholastic competition for one year after the first day of attendance following completion of transfer to the new school unless:~~

~~— (1) The transfer results from a change of residence as defined under Section 53A-2-201;~~

~~— (2) The transfer results from promotion to a grade not offered in the student's previous school, provided the receiving school is the one designated by the district to receive transfer students from the previous school;~~

~~— (3) The student is required to transfer by the local board of education;~~

~~— (4) The transfer occurs under a special group "block" permit established by one or more districts; or~~

~~— (5) The UHSAA Transfer Committee grants an exception based upon exceptional circumstances and undue hardship.~~

~~— B. A student's transfer between schools shall not extend eligibility for interscholastic competition beyond the eight consecutive semesters allowed under UHSAA by-laws.~~

~~— C. If a student is transferred pursuant to a judicial order, the student shall immediately become eligible for interscholastic competition in the court designated resident district for a period not to exceed the eight consecutive semesters under UHSAA By-laws.~~

~~— D. A student is only eligible for interscholastic competition through the school of attendance; i.e., a student may not attend one school for academic classes and participate in interscholastic competition at a different school, except that a local board of education may allow ninth grade students to participate with the high school to which they would normally be assigned upon completion of the ninth grade.~~

~~][R277-437-[5]4. Transportation.~~

~~A school district may transport its students to schools in other districts under Subsection 53A-2-210(3)(b)(i).~~

KEY: public education, enrollment options[~~4~~]

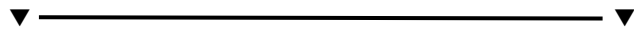
[~~January 5, 1999~~2005

Notice of Continuation January 5, 2004

Art X Sec 3

53A-1-401(1)(b)

53A-2-207 through 53A-2-213



Education, Administration

R277-438

Dual Enrollment

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27800

FILED: 04/01/2005, 17:11

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to eliminate inconsistencies between the Utah State Board of Education rule and the Utah High School Activities Association (UHSAA) by-laws and rules. The amendment also removes responsibility from the State Board of Education for high school athletic eligibility requirements. It is necessary to remove all reference to the UHSAA from this rule to allow the UHSAA to govern athletics and specified athletic eligibility in the high school consistent with its own policies and by-laws.

SUMMARY OF THE RULE OR CHANGE: The amendment removes all references to the UHSAA.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-11-102.5

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated cost or savings to the state budget. The amendment removes references to the UHSAA thereby removing any conflicts that may have existed between the State Board of Education rule and UHSAA rules and by-laws but does not involve any funding.

❖ LOCAL GOVERNMENTS: There are no anticipated cost or savings to local government. The amendment removes references to the UHSAA thereby removing any conflicts that may have existed between the State Board of Education rule and UHSAA rules and by-laws but does not involve any funding.

❖ OTHER PERSONS: There are no anticipated cost or savings to other persons. The amendment removes references to the UHSAA thereby removing any conflicts that may have existed between the State Board of Education rule and UHSAA rules and by-laws but does not involve any funding.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The amendment simply removes references to the UHSAA and does not require any additional compliance requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

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

EDUCATION

ADMINISTRATION

250 E 500 S

SALT LAKE CITY UT 84111-3272, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/16/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 05/17/2005

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R277. Education, Administration.**R277-438. Dual Enrollment.****R277-438-1. Definitions.**

[G]A. "Accredited" means evaluated and approved under the standards of the Northwest Accrediting Association or the accreditation standards of the Board, available from the USOE Accreditation Specialist.

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

[F]C. "Dual enrollment student" means a student who is enrolled simultaneously in public school and in a home school or a regularly established private school.

[F]D. "Eligibility" means a student's fitness and availability to participate in school activities governed by this rule. Eligibility is determined by a number of factors including residency (of student and legal guardian), scholarship, age, and number of semesters of participation in a particular activity.

[D]E. "Full-time student" means a student earning the school district designated number(s) and type(s) of credits required for participation in extracurricular or interscholastic activities in the school district in which the student's parent or legal guardian resides.

[C]E. "Home school" means a school comprised of one or more students officially excused from compulsory public school attendance under Section 53A-11-102.

[H]G. "Previous academic grading period" means the most recent period as defined by the school district for which a student received a recorded grade.

[B]H. "Private school" means a school satisfying the following criteria:

- (1) maintained by private individuals or corporations;
- (2) maintained and operated not at public expense;
- (3) generally supported, in part at least, by tuition fees or charges;
- (4) operated as a substitute for, and giving the equivalent of, instruction required in public schools;
- (5) employing teachers able to provide the same quality of education as public school teachers;
- (6) established to operate indefinitely and independently, not dependent upon age of the students available or upon individual family situations; and
- (7) licensed as a business by the Utah Department of Business Regulations.

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

~~[E. "Utah High School Activities Association (UHSAA)" means the organization designated by the state to administer and~~

~~supervise interscholastic activities among its member schools according to its constitution and by laws.~~

~~K. "Transfer Committee" means a committee consisting of four principals, one UHSAA staff member, and two UHSAA Board of Trustees members, authorized and functioning under UHSAA by-laws.~~

] **R277-438-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the board, by 53A-1-402(1)(b) which directs the Board to establish rules and minimum standards for access to programs and by Section 53A-11-102.5 directing the Board to make rules for transferability of credits toward graduation that are earned in a private or home school and to make rules necessary to permit home school students and private school students to participate in public school activities.

B. The purpose of this rule is to provide consistent statewide procedures and criteria for home school and private school students' participation in public school activities.

R277-438-3. Credit.

A. Utah school districts shall accept credits toward graduation from an accredited regularly established private school.

B. Utah school districts shall provide two or more options to earn credit toward graduation. At least one option shall be provided from among those listed in R277-700-6B(1), and at least one option shall be provided from those listed in R277-700-6B(2).

R277-438-4. Private and Home School Student Participation in Public School Extracurricular Activities.

A. Students exempted from compulsory public school education by the local board for instruction in private or home schools may be eligible for participation in extracurricular public school activities provided they are taking courses comparable to traditional school courses or earning credit under options outlined in R277-700-6 in at least as many of the designated courses as required by the local board of students for participation in that activity.

B. The private or home school student may only participate in extracurricular or school day activities at the school within whose boundaries the student's custodial parent(s) or legal guardian resides.

C. ~~[Any public or regularly established private school student who has not maintained scholastic eligibility shall be ineligible to participate in extracurricular activities as a dual enrollment student consistent with eligibility standards for all students as defined in the Utah High School Activities Association by laws. The Utah High School Activities Association by laws are available from the Utah State Office of Education Deputy Superintendent, the Utah High School Activities Association and most school district offices.]~~ Dual enrollment students shall be eligible for extracurricular activities consistent with eligibility standards for fully enrolled students.

~~D. Eligibility of transfer students, with the exception of R277-438-4C students, shall be decided consistent with the Utah High School Activities Association Handbook which provides:~~

~~(1) If a student's parents move, the student may remain at the high school where the student has established eligibility. Once this decision is made, the student may not at any later date transfer to another school without being considered a transfer student.~~

~~(2) The transfer rule does not apply to activities other than athletics.~~

~~—(3) All transfers from public or private schools shall be considered the same. No distinction shall be made with regard to public or private nature of any school involved with any such transfer.~~

~~—(4) If a school discontinues the sport or activity in which the student had previously participated while attending that school, eligibility in transferring to a different school which offers that sport or activity shall not be challenged. The student shall meet all other UHSAA eligibility requirements.~~

~~—(5) In transfers which are specifically mandated by court order of any court having jurisdiction to so order, the eligibility of that student shall not be challenged, provided that the student meets all other UHSAA eligibility requirements.~~

~~—(6) Dormitory students and Indian Placement Program students are immediately eligible if they are in school the first day of the school year. After the first day, such students are to be considered as transfers.~~

~~—(7) Foreign students are to be considered as any other transfer student. In assessing the UHSAA by law requirements, principals shall attempt to determine from appropriate officials if the transfer was motivated by athletic reasons or if any undue influence affected the transfer.~~

~~—(8) The exception created for guardians is intended to apply only to those situations in which a bona fide guardian has been appointed for the best interests of the student. Should it appear that a guardian has been appointed or established for the purpose of avoiding the transfer rule, the school administration, consistent with UHSAA by laws, may ignore the guardianship and examine the transfer as if no guardian existed.~~

~~—(9) When a given sport or activity is not available at a student's high school of eligibility, the student may become eligible for that specific sport or activity at another member high school. In order to activate that eligibility, the student shall:~~

- ~~—(a) transfer and gain full time status at the new school; and~~
- ~~—(b) secure written approval of both principals.~~

~~— After the conclusion of that sport season, the student may not remain at the new school without loss of eligibility in sports that are offered at the original school for up to one year as stipulated in the UHSAA by laws. Upon re-enrolling at the original school of eligibility, the student is immediately eligible for other sports within that school. All other eligibility rules apply.~~

~~—(10) If a principal determines a transfer was sought for impermissible reasons, the principal may limit the student's athletic participation to sub-varsity levels.~~

~~—(11) Initial eligibility is established when a student enters high school for the first time regardless of whether or not that entrance is in Utah or out of state.~~

~~—E. Eligibility shall be established in the previous academic grading period, as defined by the school within whose boundaries the student lives.]~~

R277-438-5. Fees.

A. Private and home school students are responsible for school fees in the same manner as full-time public school students.

B. School fees for private or home school students shall be waived by the school or school district if required under Section 53A-12-103 and R277-407, School Fees.

R277-438-6. Miscellaneous Issues.

A. A student attending activities or a portion of the school day under the provisions of Section 53A-11-102.5 shall be subject to the same behavior and discipline rights and requirements of a full-time student.

B. A student who attends an activity or a portion of the school day shall be subject to administrative scheduling and teacher discretion of the traditional school.

C. A student with disabilities may participate as a dual enrollment student consistent with Utah law, this rule and Code of Federal Regulations (CFR) Vol. 64, No. 48, Section 300.450 through 300.455.

(1) The student shall have a services plan in place prior to participation in dual enrollment using comparable procedures to those required for identifying and evaluating public school students;

(2) Students with disabilities seeking dual enrollment shall be entitled to services only in the same proportional amount that the number of private school students residing in the district is to the total number of students with disabilities in the district.

(3) Decisions about the scheduling and manner of services provided shall be the responsibility of school and district personnel.

(4) Schools and districts are not prohibited from providing services to students who are not enrolled full time in excess of those required by R277-438-6.

**KEY: public education, dual enrollment[≠]
[September 1, 2000]2005
Notice of Continuation June 1, 2004
Art X Sec 3
53A-1-402(1)(b)
53A-11-102.5**



**Environmental Quality, Environmental
Response and Remediation
R311-500
Illegal Drug Operations Site Reporting
and Decontamination Act,
Decontamination Specialist Certification
Program**

**NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE No.: 27782
FILED: 03/30/2005, 14:53**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Illegal Drug Operations Site Reporting and Decontamination Act, Title 19, Chapter 6, Part 9, requires that properties contaminated by illegal drug manufacturing be placed on a contamination list. The purpose of this proposed rule is to establish certification criteria for any private person, firm, or entity who perform decontamination of property that is on the contamination list.

SUMMARY OF THE RULE OR CHANGE: The Decontamination Specialist Certification Program is designed to assist in helping ensure that personnel in charge of decontamination are trained to perform cleanups and knowledgeable of established decontamination standards; to develop methods whereby an applicant can demonstrate competency and obtain certification to become a Certified Decontamination Specialist; to protect the public health and the environment; and to provide for the health and safety of personnel involved in decontamination activities.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-901 et seq.

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This rule provides procedures for the state to certify a decontamination specialist. A fee is required at the time of initial application and re-certification. It is anticipated that application fees will sustain this program and the personnel time involved. Additional costs relative to personnel time will be covered through existing funding. It is anticipated that the fiscal impact to the state for administration of the certification program will be limited.

❖ **LOCAL GOVERNMENTS:** There are no requirements for local government personnel to certify a decontamination specialist under Rule R311-500. There is no anticipated fiscal impact to local government.

❖ **OTHER PERSONS:** The Illegal Drug Operations Site Reporting and Decontamination Act, Decontamination Specialist Certification Program will apply to individuals seeking a Certificate or to those that are currently certified under the program. It is unknown how many prospective applicants will apply for certification. It is estimated that initial certification relating to a decontamination specialist may cost an individual approximately \$850. This includes a cost of \$700 for the Occupational Safety Health Agency (OSHA) Hazardous Waste Operation and Emergency Response (HAZWOPER, 29 CFR 1910.120) safety training required in Section R311-500-5 and \$150 for the applicable fees described in Section R311-500-4. This estimate does not include the individual's time or costs for training they may seek in preparation for certification and re-certification, time to study for and take the examination required under Section R311-500-5 or time required to maintain compliance with current rules and regulations. It is estimated that re-certification relating to a decontamination specialist may cost an individual approximately \$325. This includes a cost of \$175 for the OSHA HAZWOPER refresher training required in Section R311-500-5 and \$150 for the applicable fees required in Section R311-500-7. This estimate does not include the individual's time or costs for training they may seek in preparation for certification and re-certification, time to study for and take the examination required under Sections R311-500-5 and R311-500-7 or time required to maintain compliance with current rules and regulations.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is estimated that initial certification relating to a decontamination specialist may cost an individual approximately \$850. This includes a cost of \$700 for the OSHA HAZWOPER (29 CFR 1910.120) safety training required in Section R311-500-5 and \$150 for the

applicable fees described in Section R311-500-4. This estimate does not include the individual's time or costs for training they may seek in preparation for certification and re-certification, time to study for and take the examination required under Section R311-500-5, or time required to maintain compliance with current rules and regulations. It is estimated that re-certification relating to a decontamination specialist may cost an individual approximately \$325. This includes a cost of \$175 for the OSHA HAZWOPER refresher training required in Section R311-500-5 and \$150 for the applicable fees required in Section R311-500-7. This estimate does not include the individual's time or costs for training they may seek in preparation for certification and re-certification, time to study for and take the examination required under Sections R311-500-5 and R311-500-7 or time required to maintain compliance with current rules and regulations.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rule R311-500 provides certification criteria for any private person, firm, or entity performing decontamination of property on the contamination list specified in the statute. Individuals conducting cleanups should be able to reasonably meet the requirements established in the rule since the OSHA HAZWOPER certification standard is common in the environmental cleanup field and the examination required in the rule will be based on current, accepted procedures and information. Standardized training requirements and certification provide consistency across the state, which will likely increase the effectiveness of assessment and cleanup. Without this rule, property owners with contaminated property may be left with an unmarketable piece of property. Decontamination of clandestine drug laboratories will mitigate risk to human health and the environment while removing the stigma attached to contaminated sites, allowing impacted properties to be returned to beneficial use. Dianne Nielson, Executive Director

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

ENVIRONMENTAL QUALITY
ENVIRONMENTAL RESPONSE AND REMEDIATION
168 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Bill Rees or Brent Everett at the above address, by phone at 801-536-4167 or 801-536-4171, by FAX at 801-536-4242 or 801-536-4242, or by Internet E-mail at brees@utah.gov or beverett@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/16/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2005

AUTHORIZED BY: Dianne R. Nielson, Executive Director

R311. Environmental Quality, Environmental Response and Remediation.

R311-500. Illegal Drug Operations Site Reporting and Decontamination Act, Decontamination Specialist Certification Program.

R311-500-1. Objective, Scope and Authority.

(a) Objective. The Decontamination Specialist Certification Program is designed to assist in helping ensure that personnel in charge of decontamination are trained to perform cleanups and knowledgeable of established decontamination standards; to develop methods whereby an applicant can demonstrate competency and obtain certification to become a Certified Decontamination Specialist; to protect the public health and the environment; and to provide for the health and safety of personnel involved in decontamination activities.

(b) Scope. These certification rules apply to individuals who perform decontamination of property that is on the contamination list specified in Section 19-6-903(3)(b) of the Illegal Drug Operations Site Reporting and Decontamination Act.

(c) Authority. Section 19-6-906 directs the Department of Environmental Quality Solid and Hazardous Waste Control Board, in consultation with the Department of Health and local Health Departments, to make rules to establish within the Division of Environmental Response and Remediation:

(1) certification standards for any private person, firm, or entity involved in the decontamination of contaminated property; and

(2) a process for revoking the certification of a Decontamination Specialist who fails to maintain the certification standards.

R311-500-2. Definitions.

(a) Refer to Section 19-6-902 for definitions not found in this rule.

(b) For the purposes of the Decontamination Specialist Certification Program rules:

(1) "Applicant" means any individual who applies to become a Certified Decontamination Specialist or applies to renew the existing certificate.

(2) "Board" means the Solid and Hazardous Waste Control Board.

(3) "Certificate" means a document that evidences certification.

(4) "Certification" means approval by the Executive Secretary or the Board to perform decontamination of contaminated property under Title 19 Chapter 6, Illegal Drug Operations Site Reporting and Decontamination Act.

(5) "Certification Program" means the Division's process for issuing and revoking the Certification.

(6) "Confirmation Sampling" means collecting samples during a preliminary assessment or upon completion of decontamination activities to confirm that contamination is below the decontamination standards outlined in R392-600, Illegal Drug Operations Decontamination Standards.

(7) "Decontamination" means treatment or removal of contamination by a decontamination specialist or as otherwise allowed in the Illegal Drug Operations Site Reporting and Decontamination Act to reduce concentrations below the decontamination standards defined in R392-600 and to remove property from the contamination list specified in Subsection 19-6-903(3)(b).

(8) "Department" means the Utah Department of Environmental Quality.

(9) "Division" means the Division of Environmental Response and Remediation.

(10) "Executive Secretary" means the Executive Secretary (UST) of the Solid and Hazardous Waste Control Board or the Executive Secretary's designated representative.

(11) "Lapse" in reference to the Certification, means to terminate automatically.

(12) "UAPA" means the Utah Administrative Procedures Act, Title 63 Chapter 46b.

R311-500-3. Delegation of Powers and Duties to the Executive Secretary.

(a) The Executive Secretary is delegated authority by the Board to administer the Decontamination Specialist Certification Program established within the Division.

(b) The Executive Secretary may take any action necessary or incidental to develop certification standards and issue or revoke a certificate. These actions include but are not limited to:

(1) Establishing certification standards;

(2) Establishing and reviewing applications, certifications, or other data;

(3) Establishing and conducting testing and training;

(4) Denying applications;

(5) Issuing certifications;

(6) Evaluating compliance with the performance standards established in Section R311-500-8 through observations in the field, review of sampling methodologies and records or other means;

(7) Renewing certifications;

(8) Revoking certifications;

(9) Issuing notices and initial orders;

(10) Enforcing notices, orders and rules on behalf of the Board; and

(11) Requiring a Certified Decontamination Specialist or applicant to furnish information or records relating to his or her fitness to be a Certified Decontamination Specialist.

R311-500-4. Application for Certification.

(a) Any individual may apply for certification by paying the applicable fees and by submitting an application to the Executive Secretary to demonstrate that the applicant:

(1) meets the eligibility requirements specified in R311-500-5; and

(2) will comply with the performance standards specified in R311-500-8 after receiving a certificate.

(b) Applications submitted under R311-500-4 shall be on a form approved by the Executive Secretary and shall be reviewed by the Executive Secretary to determine if the applicant is eligible for certification.

R311-500-5. Eligibility for Certification.

(a) For initial and renewal certification, an applicant must:

(1) Meet Occupational Safety and Health Agency safety training requirements in accordance with 29 CFR 1910.120 and any other applicable safety training, including refresher training, as required by federal and state law; and

(2) Successfully pass a certification examination developed and administered under the direction of the Executive Secretary.

(A) The contents of the initial certification examination and the renewal certification examination as well as the percentage of

correct answers required to pass the examinations shall be determined by the Executive Secretary before the tests are administered. The Executive Secretary may offer a less comprehensive renewal certification examination to those individuals that have completed a Division sponsored renewal-training course.

(B) The Executive Secretary shall determine the frequency and dates of the certification examinations.

(C) For applicants that fail the initial certification examination or the renewal certification examination, the Executive Secretary may offer one additional examination within one month of the original test date without requiring submittal of a new application. The applicant shall pay a fee determined by the Executive Secretary to cover the cost of the additional testing. Applicants that fail the re-examination shall wait six months prior to submitting a new application in accordance with R311-500-4.

R311-500-6. Certification.

(a) Initial certification for all certificate holders shall be effective for a period of two years from the date of issuance, unless revoked before the expiration date pursuant to R311-500-9. Certificates shall be subject to periodic renewal pursuant to R311-500-7.

R311-500-7. Renewal.

(a) A certificate holder may apply for certificate renewal by successfully completing the following prior to the expiration date of the current certificate:

(1) Submitting a completed renewal application on a form approved by the Executive Secretary within the dates specified by the Executive Secretary;

(2) Paying any applicable fees; and

(3) Passing a certification renewal examination.

(A) If the Executive Secretary determines that the applicant meets the eligibility requirements of R311-500-5 and will comply with the performance standards of R311-500-8, the Executive Secretary shall reissue the certificate to the applicant.

(B) If the Executive Secretary determines that the applicant does not meet the eligibility requirements described in R311-500-5 or will not comply or has not complied with the performance standards of R311-500-8, the Executive Secretary may issue a notice to deny certification in a manner consistent with R311-500-9.

(b) Renewal certificates shall be valid for two years and shall be subject to revocation under R311-500-9.

(c) Any individual who is not a Certified Decontamination Specialist on the date the renewal certification examination is given because the applicant's certification was revoked or expired prior to completing a renewal application must successfully meet the application and eligibility criteria for initial certification as specified in R311-500-4 and R311-500-5 prior to issuance of a certificate.

R311-500-8. Performance Standards.

(a) A Certified Decontamination Specialist performing decontamination activities at contaminated property:

(1) shall be certified prior to engaging in any decontamination activities for the purpose of removing the contaminated property from the list referenced in Section 19-6-903(3)(b) and display the certificate upon request;

(2) shall report to the local Health Department the location of any property that is the subject of decontamination work by the Decontamination Specialist;

(3) shall file a workplan with the local Health Department;

(4) shall perform work in accordance with the workplan;

(5) shall perform work meeting applicable local, state and federal laws, including certification and licensing requirements for performing construction work;

(6) shall oversee and supervise all decontamination activities and ensure any person(s) assisting with decontamination work at contaminated property meets Occupational Safety and Health Agency safety training requirements in accordance with 29 CFR 1910.120;

(7) shall make all decisions regarding decontamination and be the only individual conducting confirmation sampling;

(8) shall follow scientifically sound and accepted sampling procedures;

(9) shall submit a Final Report to the local Health Department, which includes an affidavit stating that the property has been decontaminated to the standards outlined in R392-600;

(10) shall maintain a current address and phone number on file with the Division;

(11) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted; and

(12) shall not participate in any other activities regulated under R311-500 without meeting all requirements of that certification program.

R311-500-9. Denial of Application and Revocation of Certification.

(a) The Executive Secretary may issue a notice denying an application or an initial order or notice of intent to revoke a certification. The initial order or notice shall become final unless contested as outlined in R311-501.

(b) Grounds for denial of an application or revocation of a certification may include any of the following:

(1) Failure to meet any of the application and eligibility criteria established in R311-500-4 and R311-500-5;

(2) Failure to submit a completed application;

(3) Evidence of past or current criminal activity;

(4) Demonstrated disregard for the public health, safety or the environment;

(5) Misrepresentation or falsification of figures, reports and/or data submitted to the local Health Department or the State;

(6) Cheating on a certification examination;

(7) Falsely obtaining or altering a certificate;

(8) Negligence, incompetence or misconduct in the performance of duties as a Certified Decontamination Specialist;

(9) Failure to furnish information or records required by the Executive Secretary to demonstrate fitness to be a Certified Decontamination Specialist; or

(10) Violation of any certification or performance standard specified in this rule.

R311-500-10. No Preemption.

(a) Certification to work as a Certified Decontamination Specialist does not relieve an individual from any requirement to obtain additional licenses or certificates in different specialties to the extent required by other agencies whose jurisdiction and authority may overlap the decontamination work. The Certified Decontamination Specialist shall obtain the additional licenses or certificates prior to performing the work for which the additional license or certificate is required. The Illegal Drug Operations Site

Reporting and Decontamination Act Decontamination Specialist Certification Program rules do not preempt or supercede rules or standards promulgated by other regulatory programs in the State of Utah.

R311-500-11. Certified Decontamination Specialist List.

(a) The Executive Secretary shall maintain a current list of Certified Decontamination Specialists that shall be made available to the public upon request.

KEY: meth lab contractor certification

2005

19-6-901 et seq.

▼ ————— ▼

**Environmental Quality, Environmental
Response and Remediation**

R311-501

**Illegal Drug Operations Site Reporting
and Decontamination Act, Contesting
an Initial Order or Notice**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 27783

FILED: 03/30/2005, 14:53

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed new rule outlines processes to contest a decision by the Executive Secretary to deny an application submitted under Title 19, Chapter 6, Illegal Drug Operations Site Reporting and Decontamination Act, or revoke a Certificate issued under Section R311-500-6, Decontamination Specialist Certification Program.

SUMMARY OF THE RULE OR CHANGE: This rule outlines a process to contest a decision by the Executive Secretary to deny an application submitted under Title 19, Chapter 6, or revoke a Certificate issued under Section R311-500-6. (DAR NOTE: The proposed new Rule R311-500 is under DAR No. 27782 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-901 et seq.

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This rule provides procedures for an individual to contest a decision by the Executive Secretary to deny an application submitted under Title 19, Chapter 6, or revoke a Certificate issued under Section R311-500-6. Personnel costs relating to this matter will be covered by existing funding. It is anticipated that the fiscal impact to the state will be limited.

❖ LOCAL GOVERNMENTS: There are no requirements for local government personnel to certify a decontamination specialist. There is no anticipated fiscal impact to local government.

❖ OTHER PERSONS: A certified decontamination specialist or individual applying for certification may be affected by the subject rule if they need to contest a decision by the Executive Secretary to deny an application or revoke a Certificate previously issued. The fiscal impact of this activity to an individual is unknown.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A certified decontamination specialist or individual applying for certification may be affected by the subject rule if they need to contest a decision by the Executive Secretary to deny an application or revoke a Certificate previously issued. The fiscal impact of this activity to an individual is unknown.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rule R311-501 clarifies the due process afforded an individual contesting a decision by the Executive Secretary to deny an application submitted under Title 19, Chapter 6, or revoking a Certificate issued under Section R311-500-6. It is believed that the fiscal impact to individuals and businesses will be limited. The rules are an important element of the Decontamination Specialist Certification Program and in conjunction with cleanup rules established by the Department of Health will provide a fully functioning drug lab cleanup program in Utah. Dianne Nielson, Executive Director

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

ENVIRONMENTAL QUALITY

ENVIRONMENTAL RESPONSE AND REMEDIATION

168 N 1950 W

SALT LAKE CITY UT 84116-3085, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Bill Rees or Brent Everett at the above address, by phone at 801-536-4167 or 801-536-4171, by FAX at 801-536-4242 or 801-536-4242, or by Internet E-mail at brees@utah.gov or beverett@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/16/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2005

AUTHORIZED BY: Dianne R. Nielson, Executive Director

R311. Environmental Quality, Environmental Response and Remediation.

R311-501. Illegal Drug Operations Site Reporting and Decontamination Act, Contesting an Initial Order or Notice.

R311-501-1. Objective, Scope and Authority.

(a) Objective. The rules outline a process to contest a decision by the Executive Secretary to deny an application submitted under Title 19 Chapter 6, Illegal Drug Operations Site Reporting and Decontamination Act, or revoke a Certificate issued under R311-500-6.

(b) Scope. These rules apply to proceedings under Title 19, Chapter 6, Illegal Drug Operations Site Reporting and Decontamination Act, Subsection 906(2) (Decontamination Specialist Certification and Revocation).

(c) Authority. Section 19-6-906 directs the Department of Environmental Quality Solid and Hazardous Waste Control Board, in consultation with the Department of Health and local Health Departments, to make rules to establish within the Division of Environmental Response and Remediation:

(1) certification standards for any private person, firm, or entity involved in the decontamination of contaminated property; and

(2) a process for revoking the certification of a Decontamination Specialist who fails to maintain the certification standards.

R311-501-2. Orders, Notices and Other Decisions by the Executive Secretary.

(a) The initial order and notice described in R311-500-9 shall be issued by the Executive Secretary.

(b) An initial order or notice shall become final in 30 days unless contested as described in R311-501-3. Failure to contest an initial order or notice waives any right of administrative review or judicial appeal.

R311-501-3. Contesting an Initial Order or Notice Issued by the Executive Secretary.

(a) The validity of an initial order or notice described in R311-500-9 may be contested by filing a written Request for Agency Action with the Board:

Solid and Hazardous Waste Control Board

Division of Solid and Hazardous Waste

288 North 1460 West

PO Box 144880

Salt Lake City, Utah 84114-4880.

(b) Any such request is governed by and shall comply with the requirements of Section 63-46b-3(3) of UAPA, and shall be received for filing within 30 days of the issuance of the Executive Secretary's order or notice.

(c) Notice of the time and place for a hearing shall be provided in the response to a request for Agency Action, or shall be provided promptly after the hearing is scheduled.

(d) A Request for Agency Action, and all subsequent proceedings acting on that request, are governed by UAPA

R311-501-4. Intervention.

(a) Intervention shall not be allowed.

R311-501-5. Conduct of Proceedings.

(a) The Board is the "agency head" as that term is used in UAPA. The Board is also the "presiding officer," as that term is used in UAPA, except:

(1) The Chair of the Board shall be considered the Presiding Officer to the extent that these rules allow; and

(2) The Board may by order appoint a Presiding Officer to preside over all or a portion of the proceedings.

(b) The Chair of the Board may delegate his/her authority as specified in this Rule to another Board member or Department employee.

(c) Unless otherwise explicitly provided in an order of appointment, any appointment of a Presiding Officer or Presiding

Officers shall be for the purpose of conducting all aspects of an adjudicative proceeding, except issuance of the final order. See also R311-501-7 regarding orders of Presiding Officers.

(d) Proceedings pursuant to a Request for Agency Action shall be conducted formally if the Request for Agency Action is made to contest the validity of the following:

(1) An order or notice revoking a certification;

(2) A notice denying an application; or

(3) A consent order.

(e) The Board may convert proceedings, which are designated to be formal to informal, and proceedings, which are designated as informal to formal, if conversion is in the public interest and rights of all parties are not unfairly prejudiced. See Section 63-46b-4(3) of UAPA.

(f) The Presiding Officer(s) may direct the Parties to appear at a specified time and place for a pre-hearing conference(s) for the purposes of clarifying the issues, simplifying the evidence, facilitating discovery, expediting proceedings, or encouraging settlement.

(g) Unless otherwise directed by the Presiding Officer(s), parties to the proceeding may submit a pre-hearing brief at least five business days before the hearing. Post-hearing briefs will be allowed only as authorized by the Board. Parties are not required to submit pre-hearing or post-hearing briefs unless directed to do so by the Presiding Officer(s). Pre-hearing and post-hearing briefs shall not exceed 15 pages unless otherwise provided by the Presiding Officer for all Parties.

(1) Response briefs may not be filed unless permitted by the Presiding Officer(s).

(h) Parties to a proceeding are encouraged to prepare a joint proposed schedule addressing the matters specified in subparagraph (i). If the parties cannot agree on a joint proposed schedule, the Presiding Officer(s) may consider proposals by any party.

(i) The Presiding Officer(s) shall establish schedules for discovery and other pre-hearing proceedings, for the hearing, and for any post-hearing proceedings.

(j) Except as otherwise provided by statute, the Presiding Officer(s) may approve extensions of time limits established by this rule, and may extend time limits adopted in schedules established under subparagraph (i). The Presiding Officer(s) may also postpone hearings. The Chair of the Board may act as Presiding Officer for purposes of this paragraph.

(k) Time shall be computed as provided in Rule 6(a) of the Utah Rules of Civil Procedure. No additional time shall be allowed for service by mail.

(l) All motions shall be filed a minimum of ten days before a scheduled hearing, unless otherwise allowed or required by the Presiding Officer(s). A memorandum in opposition to a motion may be filed within eight days of the filing of the motion, or at least one day before any scheduled hearing, whichever is earlier. Memoranda in support of or in opposition to motions may not exceed 15 pages unless otherwise provided by the Presiding Officer.

(m) The original of any motion, brief, request for intervention, or other submission shall be filed with the Executive Secretary. In addition, the submitter shall provide a copy to each Presiding Officer and, through counsel of record if applicable, to each party.

R311-501-6. Hearings.

(a) The Presiding Officer(s) shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony and cross-examination, and on the length of argument.

(b) Unless otherwise directed by the Presiding Officer(s), the Petitioner shall present its case first, followed by the Executive Secretary, unless the Executive Secretary is the petitioner, and any other Parties. Rebuttal, if any, shall follow the same order.

(c) If a party desires to employ a court reporter to make a record of the hearing, the original transcript of the hearing shall be filed with the presiding officer at no cost to the agency to enable the Presiding Officer to refer to the transcript in drafting the proposed order for the Board.

R311-501-7. Orders.

(a) Unless otherwise directed by the Presiding Officer(s), each party may provide proposed orders for the Presiding Officer(s) within three days of the conclusion of the hearing.

(b) A Presiding Officer or Presiding Officers appointed for the purpose of conducting all aspects of an adjudicative proceeding, except issuance of the final order, shall prepare a draft order. A copy of the draft order shall be provided to all Parties.

(c) Any Party may, within 10 days of the date the draft order is mailed, delivered, or published, comment on the draft order. Such comments shall be limited to 15 pages, and shall cite to specific parts of the record, which support the comments.

(d) The Board shall review the draft order, comments on the draft order, and those specific parts of the record cited by the Parties in any comments. The Board shall then determine whether to accept or modify the draft order, to remand the matter to an appointed Presiding Officer or Presiding Officers for further proceedings, or to act as Presiding Officers for further proceedings.

(e) The Board may modify this procedure with notice to all Parties.

(f) An order shall include the information required by Sections 63-46b-10 or 63-46b-5(1)(i) of UAPA.

R311-501-8. Stays of Orders.

(a) A Party seeking a Stay of the Order of the Executive Secretary shall file a motion with the Presiding Officer(s). A Stay, if granted, would suspend the effect of the challenged Order.

(b) The Presiding Officer(s) may order a stay of the Executive Secretary's Order if the Party seeking the Stay demonstrates that:

(1) The Party seeking the Stay will suffer irreparable harm unless the stay issues;

(2) The threatened injury to the Party seeking the Stay outweighs whatever damage the proposed stay is likely to cause the Party restrained or enjoined;

(3) The Stay, if issued, would not be adverse to the public interest; and

(4) There is substantial likelihood that the Party seeking the Stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further evaluation by the Presiding Officer(s).

(c) The Board as Presiding Officer may grant a stay of its order (or the Order of its appointed Presiding Officer) during the pendency of judicial review if the standards of R311-501-8(b) are met.

R311-501-9. Reconsideration.

(a) No agency review under Section 63-46b-12 of UAPA is available. A Party may request reconsideration of an order of the Presiding Officer(s) as provided in Section 63-46b-13 of UAPA.

R311-501-10. Disqualification of Presiding Officer(s).

(a) A member of the Board or other Presiding Officer shall disqualify him/herself from performing the functions of the Presiding Officer regarding any matter in which:

(1) He/she, or his/her spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

(A) Is a party to the proceeding, or an officer, director, or trustee of a Party;

(B) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented a Party concerning the matter in controversy;

(C) Knows that he/she has a financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a Party to the proceeding;

(D) Knows that he/she has any other interest that could be substantially affected by the outcome of the proceeding; or

(E) Is likely to be a material witness in the proceeding.

(b) The Presiding Officer is subject to disqualification under principles of due process and administrative law.

(c) A motion for disqualification shall be made first to the Presiding Officer or Presiding Officers. If the Presiding Officer is or Presiding Officers are appointed, any determination of the Presiding Officer or Presiding Officers upon a motion for disqualification may be appealed to the Board.

(a) Nothing in these rules shall prevent any person from requesting an opportunity to address the Board as a member of the public, rather than as a party. An opportunity to address the Board shall be granted at the discretion of the Board. However, addressing the Board in this manner does not constitute a request for agency action under R311-501-3.

(a) Requests for records under the Utah Government Record Access and Management Act, Title 63, Chapter 2, Utah Code Ann., are not governed by R311-501. See R305-1, U.A.C.

KEY: meth lab certification revocation

2005

19-6-901 et seq.



Human Services, Child Protection
Ombudsman (Office of)

R515-1

Processing Complaints Regarding the
Utah Division of Child and Family
Services

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 27772

FILED: 03/16/2005, 08:56

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Pursuant to Subsection 62A-4a-208(4), the Office of Child Protection Ombudsman is required to make rules regarding the receiving, processing, and investigation of complaints regarding the Utah Division of Child and Family Services (DCFS).

SUMMARY OF THE RULE OR CHANGE: This proposed rule outlines the receiving and processing of complaints; notification to complainants and DCFS regarding a decision to investigate or to decline to investigate a complaint; prioritizing workload; investigative timeframes; notifying complainants and the DCFS regarding the results of investigations; and making recommendations based on the findings and results of recommendations.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 62A-4a-208(4)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--This is an existing process that already has an existing budget. Therefore there are no costs or savings to the state.

❖ LOCAL GOVERNMENTS: None--This process only affects DCFS and has no effect on local government.

❖ OTHER PERSONS: None--This rule is related only to the receiving and processing of complaints from persons with a grievance regarding DCFS. There is no cost to the individuals filing a complaint.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule is related only to the receiving and processing of complaints from persons with a grievance regarding DCFS. There is no cost to the individuals filing a complaint.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule does not have any fiscal impact on any businesses as it is a rule related only to the receiving and processing of complainants regarding DCFS. Lisa-Michele Church, Executive Director

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

HUMAN SERVICES
CHILD PROTECTION OMBUDSMAN (OFFICE OF)
Room 422
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Cook at the above address, by phone at 801-538-4626, by FAX at 801-538-3942, or by Internet E-mail at cacook@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/16/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 07/30/2005

AUTHORIZED BY: Lisa-Michele Church, Executive Director

R515. Human Services, Child Protection Ombudsman (Office of).**R515-1. Processing Complaints Regarding the Utah Division of Child and Family Services.****R515-1-1. Purpose.**

(1) The purpose of this rule is to outline the processing of complaints regarding the Utah Division of Child and Family Services.

R515-1-2. Statutory Authority.

(1) Pursuant to Section 62A-4a-208, the Office of Child Protection Ombudsman is authorized to receive and investigate complaints regarding the Utah Division of Child and Family Services.

R515-1-3. Definitions.

(1) "Ombudsman's Office" means the Office of Child Protection Ombudsman.

(2) "Complainant" means any person who files a complaint with the Ombudsman's Office.

(3) "Division" means the Utah Division of Child and Family Services.

(4) "Services Review Analyst" means an employee of the Ombudsman's Office assigned to conduct investigations of complaints.

(5) "Complaint" means a grievance filed with the Ombudsman's Office regarding the Division or its employees.

R515-1-4. Receiving and Processing Complaints.

(1) The complainant may file a written, oral, or electronic complaint with the Ombudsman's Office no later than 18 months from the date of the alleged circumstances giving rise to the complaint.

(2) An electronic complaint may be filed at http://www.hsocpo.utah.gov/file_complaint.htm.

(3) The complaint will include:

(a) A summary of the alleged circumstances giving rise to the complaint.

(b) The persons involved in the complaint.

(c) A summary of the actions taken by the complainant to resolve the complaint.

(i) If there has been no attempt to resolve the complaint with the Division, the Ombudsman's Office may refer the complaint to the Division for a response.

(d) The anticipated outcome the complainant is seeking.

(e) The complainant may request that the Ombudsman's Office conduct an investigation of the complaint.

(4) The Ombudsman's Office will send the complainant a Notice of Agency Action regarding the decision made to accept or deny an investigation request.

(a) If an investigation request is accepted the Services Review Analyst shall:

(i) Interview the complainant and gather information as necessary to determine the validity of the complaint.

(ii) Document the findings of the investigation.

(iii) May make recommendations to the Division to address the complaints found to be valid.

(b) The investigation will be completed within 180 days from the date of file the complaint, taking into consideration extenuating circumstances such as the complexity of the case or workload.

(6) The Ombudsman's Office will notify the complainant upon the completion of the investigation by issuing a Notice of Agency Action.

(7) If a complaint indicates there is an immediate risk to the safety of a child or children, the Ombudsman's Office will immediately notify the Division.

KEY: complaint, DCFS, ombudsman, investigation
2005
62A-4a-208(4)



Human Services, Services for People
with Disabilities
R539-2-6
Entry Into and Movement Within
Service System

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27792
FILED: 04/01/2005, 12:47

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendment makes two minor grammatical changes and removes the requirement for receiving Providers to be notified and present at the discharge meeting.

SUMMARY OF THE RULE OR CHANGE: Support Coordinators are not required to notify the receiving Provider of the person's discharge meeting.

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

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There will be no anticipated cost. The amendment does not reflect a change in Division methodology. These procedures are already in practice.
- ❖ LOCAL GOVERNMENTS: No local government funding is used. There is no cost to local governments.
- ❖ OTHER PERSONS: There is no additional cost to other persons. The circumstances surrounding the person's discharge will determine if a receiving Provider is notified. The Support Coordinator and person in services will make that determination.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The circumstances surrounding the person's discharge will determine if a receiving Provider is notified. The Support Coordinator and person in services will make that determination.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Service Providers may lose or gain funding due to the movement of people among Providers. This is not a change to Division methodology. No other fiscal impacts are identified beyond Service Providers under contract with the Division. 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 05/16/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 05/17/2005

AUTHORIZED BY: Lisa-Michele Church, Executive Director

R539. Human Services, Services for People with Disabilities.
R539-2. Service Coordination.
R539-2-6. Entry Into and Movement Within Service System.

(1) The Division shall assure that an appropriate choice of supports and Providers exist for Persons entering or moving within the support system in accordance with Subsections 62A-5-103(1) and 62A-5-103(12). The Division shall coordinate, approve, and oversee all out-of-home placements.

(2) Entry into Division-funded supports:

(a) Once a Person's application for waiver services is processed by the Division, the Person is referred to the local financial eligibility office.

(b) Prior to the provision of community living supports, a Person may be required to complete a medical examination and, if under the age of 18, provide a current immunization record.

(c) Admission to Division programs from a nursing facility will be coordinated by the Region office with the Person, the nursing facility social worker, the Support Coordinator, and the prospective Provider.

(d) The Division shall provide Persons with a choice of Providers by:

- (i) sending Providers notice and invitation to submit offers to provide services via use of Division Form 1-6; and
- (ii) assisting the Person to make an informed choice of Provider.

(e) Interested Providers may schedule and coordinate a service entry meeting that involves the Person, the Representative, Support Coordinator, and invited guests, (~~[i.e.g.,~~ Developmental Center staff, school representative, and Division staff). The meeting should be held at the prospective site of placement whenever possible.

(f) The Provider shall submit an acceptance or denial letter within ten business days of the service entry meeting to the Support Coordinator and the Person. An acceptance letter shall include a written description of the following:

(i) services to be provided;
 (ii) location of the service;
 (iii) name and address of the primary care physician, or other medical specialists, including, for example, neurologist or dentist, if applicable;

(iv) a training and in-service schedule for the staff to meet with the Person;

(v) proposed date services will begin; and

(vi) agreed upon rate and level of support.

(g) The physical move of the Person shall be the responsibility of the Provider who is accepting the Person.

(h) The Division shall send the Person's information to the Provider five business days prior to the move.

(3) Any Team Member may initiate a request to change Provider or Developmental Center residence by asking the Support Coordinator to arrange a meeting.

(4) If a Person requests a change of Provider, the Support Coordinator shall arrange a discharge meeting that provides a ten-business-day written notice to the Person, present Provider, and Support Coordinator~~[, and receiving Provider]~~.

(a) The present Provider may request the opportunity to make changes in the existing relationship to address the concerns that initiated the discharge meeting.

(b) The Region Director shall make the final decision concerning the discharge if the parties cannot come to agreement.

(5) A Provider initiated request for discharge of a Person shall require 90 calendar days prior notification to the Person and the Division.

(6) Emergency Services Management Committee (ESMC):

(a) An Emergency Services Management Committee chairperson shall be appointed by the Division Director. Membership shall include:

(i) Division Specialists;

(ii) a representative from each Region who is skilled in crisis intervention and knowledgeable of local resources;

(iii) a representative from the Developmental Center; and

(iv) others as appointed by the Division Director.

(b) The Emergency Services Management Committee shall ensure that Persons are placed in the least restrictive most appropriate living situation as per Sections 62A-5-302 through 62A-5-312 and Subsection 62A-5-402(2)(a). Exceptions to the statute requiring children under age 11 to live only in family-like environments, as per Section 62A-5-403, require Emergency Services Management Committee review and recommendation to the Division Director for final written approval.

KEY: services, people with disabilities

~~[March 12,]~~2005

62A-5-102

62A-5-103

Human Services, Services for People with Disabilities **R539-3-10** Prohibited Procedures

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27793

FILED: 04/01/2005, 12:49

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment clarifies the procedures Providers are restricted in practicing while providing services to people receiving Home and Community-Based services funded by the Division.

SUMMARY OF THE RULE OR CHANGE: This amendment prohibits physical punishment, locked confinement, and the withholding of meals and assistive devices for people receiving funding by the Division.

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

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There will be no anticipated cost. The new section does not reflect any change in methodology within the Division. These standards are already in practice and will not require any additional funding.

❖ **LOCAL GOVERNMENTS:** No local government funding is used. Therefore, there is no cost to local government.

❖ **OTHER PERSONS:** There is no additional cost to other persons. This rule clarifies the rights of people receiving services through Division funding. It does not reflect a change in methodology within the Division or the Division's expectations of Service Providers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule clarifies the rights of people receiving Home and Community-Based services through the Division. It does not reflect a change in methodology within the Division or the Division's expectations of Service Providers.

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 or 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 05/16/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 05/17/2005

AUTHORIZED BY: Lisa-Michele Church, Executive Director

R539. Human Services, Services for People with Disabilities.

R539-3. Rights and Protections.

R539-3-10. Prohibited Procedures.

(1) The following procedures are prohibited for Division staff and Providers, including staff hired for Self-Administered Services, in all circumstances in supporting Persons receiving Division funding:

(a) Physical punishment, such as slapping, hitting, and pinching.

(b) Demeaning speech to a Person that ridicules or is abusive.

(c) Locked confinement in a room.

(d) Denial or restriction of access to assistive technology devices, except where removal prevents injury to self, others, or property as outlined in Sections R539-3-6 and R539-4-7.

(e) Withholding or denial of meals, or other supports for biological needs, as a consequence or punishment for problems.

(f) Any Level II or Level III Intervention, as defined in R539-4-3(n) and R539-4-3(o), used as coercion, as convenience to staff, or in retaliation.

(g) Any procedure in violation of R495-876, R512-202, R510-302, 62A-3-301 thru 62A-3-321, and 62A-4a-402 thru 62A-4a-412 prohibiting abuse.

KEY: people with disabilities, rights

~~March 12,~~ 2005

62A-5-102

62A-5-103



Human Services, Services for People with Disabilities

R539-5

Preparation and Maintenance of Client Records

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 27802

FILED: 04/01/2005, 20:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The repealing of this rule is proposed after a comprehensive revision and consolidation of the Division's rules.

SUMMARY OF THE RULE OR CHANGE: The changes involve repealing the current rule and replacing it with a new rule moving some information into the Provider's service contract with the Division. The rule is repealed in its entirety. (DAR NOTE: The proposed new rule for R539-5 is under DAR No. 27801 in this issue.)

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--This revision does not alter the basic operations or functions of the Division and, therefore, does not result in either a cost or savings to the state.

❖ LOCAL GOVERNMENTS: None--Local government funding is not used. Therefore, there is no cost to local governments.

❖ OTHER PERSONS: None--This revision does not alter the basic operations or functions of the Division and, therefore, does not result in either a cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This revision does not alter the basic operations or functions of the Division. Provider requirements now appear in their current service contracts. This does not result in either cost or savings to Providers or other affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--This revision does not alter the basic operations or functions of the Division. Provider requirements now appear in their current service contracts. This does not have a fiscal impact on service Providers. 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 05/16/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 05/17/2005

AUTHORIZED BY: Lisa-Michele Church, Executive Director

R539. Human Services, Services for People with Disabilities.**[R539-5. Preparation and Maintenance of Client Records.****R539-5-1. Provider Records for Individuals.****—A. Policy.**

Each provider shall be required to maintain an individual record for each person receiving services. Each record will contain all information required by the Office of Licensing (OL), Division of Services for People with Disabilities (DSPD), DSPD Regional Office, and Medicaid Provider Manual for Home and Community-Based Services. All record information will be treated as confidential, locked and secured to protect the primary interests of the recipient.

—B. Procedures.

1. Each individual record will contain the following demographic and program information, unless the competent recipient objects to the inclusion of any item:

—a. Name, birth date, individual I.D. and Medicaid numbers (if applicable);

—b. Photo of individual receiving services;

—c. Name, address, and telephone number of the individual's guardian, or other emergency contact person, and instructions on how to contact that person;

—d. Name and telephone number of the individual's primary care physician, and medical insurance, if any;

—e. Health information to include, for example, prescribed medication(s), allergies, and chronic complaints;

—f. Reports of physical and dental examinations, and records of illness, accidents, or injuries;

—g. Reports of behavioral or other incidents involving the recipient;

—h. Authorization for emergency medical treatment;

—i. Administration of medication, first aid, and referrals to health care facility (if applicable);

—j. A social history, psychological evaluation, and documentation of eligibility for services;

—k. Annual Individual Program Plan (IPP), including semi-annual review;

—l. Admission and termination dates and documentation;

—m. Monthly progress notes and supporting data collection sheets. Data collection sheets not maintained in the individual's record shall be available for review;

—n. Documentation of persons reviewing an individual's record to include signature, title, date, and reason for examining the record. Provider staff shall have access to those portions of the record which directly relates to their work assignment;

—o. Release of information forms when appropriate. DSPD approval must be obtained prior to release of records to anyone except the recipient of services and legal representative.

2. The purchase of service provider must develop and maintain written documentation for each Home and Community-Based Services Waiver for which billing is made, that includes at least the following:

—a. Name of the recipient;

—b. The specific services rendered;

—c. The date and hours of attendance;

—d. Who rendered the services;

—e. The setting in which the services were rendered to include, for example, day treatment facility, recipient's home;

—f. The relationship of the services to the treatment regimen described in the IPP;

—g. Updates or description of the recipient's progress (semi-annual and annual reviews).

—3. The provider will deliver the individual records to the DSPD regional office upon written request.

—4. When the records contain information which would be classified as confidential or private, pursuant to 63-2-101 through 108, the Provider will observe the requirements of 63-2-202 in safeguarding and releasing information.

R539-5-2. Personal Funds Management.**—A. Policy.**

Each individual receiving services shall receive training, support, and opportunities to manage finances to the maximum extent possible. Acknowledging that individuals served in DSPD have income sources not originating with DSPD/DHS (including for example, SSI, SSA, employment income), the Division requires Providers to document the handling of the personal funds in a fashion that is least intrusive to the individual, and in a manner that is in keeping with the intent of the income source.

R539-5-3. Provider Policy and Records.**—A. Policy.**

Providers shall set up written policies which include a description of the program services to be offered, philosophy, objectives and the population to be served. The Provider will comply with the OL and DSPD policy and record requirements.

—B. Procedures.

1. The Provider shall maintain service records which include the following information:

—a. Name and address of the facility, and owner or sponsoring agency;

—b. Agency or corporate organizational chart including names of consultants and employees;

—c. Job descriptions for all personnel including volunteers with ongoing involvement;

—d. Policy specifying the amount of time family or friends may stay as overnight guests;

—e. Grievance procedures for individuals receiving services.

—(1) A copy shall be given to each individual which will be read and explained to each individual and guardian, and shall be documented by a statement signed by the individual and guardian and maintained in the individual's record.

—(2) Individuals receiving services shall be provided with the telephone number of the DSPD case manager and the 24 hour emergency number of the DSPD regional office at which the case manager works;

—f. Financial policy regarding management of the finances of the individuals receiving services, room and board charges, and food stamps consistent with R539-5-2.A. The policy must ensure that all individual funds managed by the Provider are released at the time of discharge, or upon demand to the individual or legal guardian after outstanding bills are paid.

—(1) The Provider shall have a written agreement signed by the recipient and legal representative which specifies in advance the fees, absenteeism, vacations, leave policy, extra costs charged for care and services, obligations concerning payment of such charges and the Provider's refund policy.

—(2) Providers will assist individuals, receiving their services, in applying for unearned income benefits for which an individual may be entitled, including Food Stamp benefits.

— (a) Food Stamp benefits shall be managed as per Office of Family Support (OFS) Regulations, and may be used to supplement food costs of the group home and supervised apartment services in which the recipient of food stamps resides;

— (b) The receipt and disbursement of food stamps will be properly documented by the Provider.

— (3) Where a parent or guardian is representative payee for an individual, the Provider shall receive all service fees from the payee.

— (4) The Provider may act as representative payee for an individual receiving group home or supervised apartment services, if necessary and when requested in writing by the individual or the individual's guardian.

— g. Civil Rights Policy, to include R539-2-1, R539-2-3, Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112), and the American with Disabilities Act of 1990 (P.L. 101-336);

— h. Emergency procedures for injury, illness, and death of an individual receiving services, that are readily accessible in the facility. These procedures shall include instructions on when to notify the guardian, DSPD, and DSPD regional office;

— i. Emergency procedures for fire and disaster including a plan for evacuation shall be posted at each facility.

— (1) A training program covering these procedures for individuals receiving services shall be developed, and conducted quarterly;

— (2) Documentation of quarterly evacuation drills shall be maintained by the Provider;

— j. R539-2-6 regarding abuse or neglect of individuals with disabilities. This policy shall be available in the facility. Each employee shall read and sign a statement indicating that the employee has read the policy. This statement must be maintained in the employee's personnel file;

— k. Operating policies, procedures, and personnel practices.

— 2. The Provider shall orient the prospective service recipient regarding the Individual Program Plan (IPP) process and the involvement of the individual receiving services in that process;

— 3. Individuals who are sponsored by agencies or individuals other than DSPD shall receive the same level of service from the Provider as individuals who are sponsored by DSPD.

— 4. Each Provider shall maintain the following records where applicable.

— a. A license stating the maximum number of individuals allowed to reside in the facility;

— b. Documentation of compliance with zoning, life safety, health, and fire inspections as required for licensure, if appropriate;

— c. Copies of any contracts or agreements with other service agencies or individuals in the community regularly providing services through the auspices of the Provider to the individuals receiving services in the program;

— d. Records of operational costs and revenue according to accounting principles acceptable to the Department of Human Services;

— e. Individual service documentation shall include: sponsorship of each individual, DSPD, and private; record of payments to the Division; and reimbursement requests (Forms 520, 1032). These records must be maintained for five years from the date of discharge;

— f. Accurate records on each individual receiving services shall be maintained in locked files or otherwise secured. The records shall contain at least the items stated in R539-5-1.

— g. A Provider who contracts with federal, state, county, city or other agencies to utilize facilities for which the Provider realizes a financial benefit shall ensure those benefits are used to benefit the individuals receiving services from the Provider. The provider shall maintain documentation of this in its administrative fiscal record.

**KEY: disabled persons*, social services
1993**

**Notice of Continuation December 18, 2002
62A-5-103]**

Human Services, Services for People with Disabilities **R539-5** Self-Administered Services

NOTICE OF PROPOSED RULE (New Rule)

DAR FILE No.: 27801

FILED: 04/01/2005, 20:43

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule is submitted after a comprehensive revision of the Division's Administrative Rules as a result of S.B. 30 from the 2003 Legislative Session. The rule clarifies the rights and responsibilities of people receiving Self-Administered Services. A repeal of the current rule has also been filed. (DAR NOTES: S.B. 30 is found at UT L 2003 Ch 197, and was effective 05/05/2003. The proposed repeal of the current Rule R539-5 is under DAR No. 27802 in this issue.)

SUMMARY OF THE RULE OR CHANGE: This rule outlines the responsibilities of people receiving Self-Administered Services, such as the required documentation people must submit to a fiscal agent, employee documentation, incident reporting, and the right to obtain both Provider Agency services and Self-Administered Services. In addition, the rule outlines requirements for employees hired by people receiving Self-Administered Services.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no anticipated cost. The new rule does not reflect any change in methodology within the Division. These procedures are already in practice and will not require additional funding.

❖ LOCAL GOVERNMENTS: No local government funding is used. Therefore, there is no cost to local government.

❖ OTHER PERSONS: There is no additional cost to other persons. This rule clarifies the rights and requirements for people participating in Self-Administered Services and does not reflect a change within the Division. Requirements within this rule reflect current practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Self-Administered Services structure allows people to hire, train, and fire their own employees to provide direct service care. This rule clarifies the rights and requirements for people participating in that program and does not reflect a change within the Division.

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. No fiscal impacts are identified. Lisa-Michele Church, Executive Director

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SERVICES FOR PEOPLE WITH DISABILITIES
Room 411
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THIS RULE MAY BECOME EFFECTIVE ON: 05/17/2005

AUTHORIZED BY: Lisa-Michele Church, Executive Director

R539. Human Services, Services for People with Disabilities.

R539-5. Self-Administered Services.

R539-5-1. Purpose.

(1) The purpose of this rule is to establish procedures and standards for Persons and their families receiving Self-Administered Services.

R539-5-2. Authority.

(1) This rule establishes procedures and standards for Self-Administered Services as required by Subsection 62A-5-103(8).

R539-5-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-2.

(2) In addition:

(a) "Employee" means any individual hired to provide services to a Person receiving Self-Administered Services.

(b) "Fiscal Agent" means an individual or entity contracted by the Division to perform fiscal, legal, and management duties.

(c) "Grant" means a budget allocated by the Division to the Person through which Self-Administered Services are purchased.

(d) "Grant Agreement" means a written agreement between the Person and the Division that outlines requirements the Person must follow while receiving Self-Administered Services.

(e) "Self-Administered Services" means a structure for a Person or Representative to administer Division paid services. This program allows the Person to hire, train, and supervise employees who will provide direct services from selected services as outlined in the State of Utah Home and Community Based Services Waivers (Medicaid 1915C), dated July 1, 2003 for mental retardation and related conditions and July 1, 2004 for acquired brain injury. Once the Person is allocated a budget, a Grant is issued for the purpose of purchasing specific services. Grant funds are only disbursed to pay for actual services rendered. All payments are made through a Fiscal Agent under contract with the Division. Payments are not issued to the Person, but to and in the name of the Employee.

R539-5-4. Participant Requirements.

(1) In addition to Division Rule, a Person receiving Self-Administered Services must adhere to the terms of their Grant Agreement.

(2) If the Person does not meet the requirements in Rule and the Grant Agreement, the Division may require the Person to use a contracted Provider.

(3) The Person shall ensure that each Employee completes the requirements outlined in R539-5-5.

(4) The Person shall provide the Fiscal Agent with the following documents for each Employee hired to provide services:

(a) Original Form W-4;

(b) Original Form I-9 (including supporting documentation);

(c) Copy of the signed Employment Agreement; and

(d) Original signed Timesheets, verifying the time worked is true and accurate.

(5) The Person or Representative shall complete a Monthly Summary of services for each month in which services are rendered and submit it to the Support Coordinator by the 15th of the month following the month of services.

(a) If the Person does not provide this information to the Division for a three month period, the fourth month's payment shall be withheld until the monthly summaries are submitted.

(b) If the Person submits all required monthly summaries within the fourth month, payment will be reinstated.

(c) If monthly summaries are not provided for the fifth month, then at the sixth month, the Division will require the Person to use a contracted Provider and not participate in Self-Administered Services.

(6) The Division may require the Person to use some form of technical assistance, if needed (i.e. Behaviorist, Accountant, Division Supervisor, etc.). Technical assistance is available to the Person, even if not required by the Division.

(7) The Person's Representative shall notify the Support Coordinator if any of the following occurs:

(a) If the Person moves;

(b) If the Person is in the hospital or nursing home; or

(c) Death of the Person.

R539-5-5. Employee Requirements.

(1) All Employees hired by the Person must be 16 years of age or older. Employees under age 18 must have the Employee Agreement co-signed by their parent/Guardian.

(2) Parents, Guardians, or step-parents shall not be paid to provide services to the Person, nor shall an individual be paid to provide services to a spouse.

(3) Employees must complete the following prior to working with the Person and receiving payment from the Fiscal Agent:

- (a) Complete and sign Form W-4;
- (b) Complete and sign Form I-9 (including supporting documentation);
- (c) Complete and sign the Employee Agreement Form;
- (d) Read and sign the Department and Division Code of Conduct (Department Policy 05-03 and Division Directive 1.20); and
- (e) Review the approved and prohibited Behavior Supports as identified in Administrative Rule R539-4-4, the Support Book, and other best practice sources recommended by the Division, if applicable. Behavior Supports shall not violate R495-876, R512-202, UCA 62A-3-301 thru 62A-3-321, and 62A-4a-402 thru 62A-4-412 prohibiting abuse.
- (f) Review the Person's Support Book.
- (g) Complete any screenings and trainings necessary to provide for the health and safety of the Person (i.e., training for any specialized medical needs of the Person).
- (h) If applicable, be trained on the Person's Behavior Support Plan.
- (i) Complete and sign the Application for Certification Form.

R539-5-6. Incident Reports.

- (1) The Person or Representative shall notify the Division by phone, email, or fax of any reportable incident that occurs while the Person is in the care of an Employee, within 24 hours of the occurrence.
- (2) Within five business days of the occurrence of an incident, the Person or Representative shall complete a Form I-8, Incident Report, and file it with the Division.
- (3) The following incidents require the filing of a report:
 - (a) Actual and suspected incidents of abuse, neglect, exploitation, or maltreatment per the DHS/DSPD Code of Conduct and Utah Code Annotated Sections 62-A-3-301 through 321 for adults and Utah Code Annotated Sections 62-4a-401 through 412 for children;
 - (b) Drug or alcohol abuse;
 - (c) Medication overdoses or errors reasonably requiring medical intervention;
 - (d) Missing Person;
 - (e) Evidence of seizure in a Person with no seizure diagnosis;
 - (f) Significant property destruction (Damage totaling \$500.00 or more is considered significant);
 - (g) Physical injury reasonably requiring a medical intervention;
 - (h) Law enforcement involvement;
 - (i) Use of mechanical restraints, time-out rooms or highly noxious stimuli that is not outlined in the Behavior Support Plan, as defined in R539-4; or
 - (j) Any other instances the Person or Representative determines should be reported.
- (4) After receiving an incident report, the Support Coordinator shall review the report and determine if further review is warranted.

R539-5-7. Service Delivery Methods.

- (1) Persons authorized to receive Self-Administered Services may also receive services through a Provider Agency in order to obtain the array of services that best meet the Person's needs.

KEY: disabilities, self administered services

2005

62A-5-102

62A-5-103

▼ ————— ▼

Human Services, Services for People with Disabilities **R539-8** Community-Based Services

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 27795

FILED: 04/01/2005, 12:55

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The repealing of this rule is proposed after a comprehensive revision and consolidation of the Division's rules.

SUMMARY OF THE RULE OR CHANGE: The change involves repealing the current rule and placing these service descriptions in the Provider's service contracts with the Division. The Division's internal processes are outlined in Internal Directives for staff. This rule is repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--The repeal of this rule does not alter the basic operations or functions of the Division and, therefore, does not result in either a cost or savings to the state.
- ❖ LOCAL GOVERNMENTS: None--Local government funding is not used. Therefore, there is no cost to local governments.
- ❖ OTHER PERSONS: None--The repeal of this rule does not alter the basic operations or functions of the Division and, therefore, does not result in either a cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The repeal of this rule does not alter the basic operations or functions of the Division. Provider requirements now appear in their current service contracts. Division staff requirements appear in Internal Directives. This does not change the fiscal impact on service providers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The repeal of this rule does not alter the basic operations or functions of the Division. Provider requirements now appear in their current service contracts. Lisa-Michele Church, Executive Director

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THIS RULE MAY BECOME EFFECTIVE ON: 05/17/2005

AUTHORIZED BY: Lisa-Michele Church, Executive Director

R539. Human Services, Services for People with Disabilities.

~~**R539-8. Community-Based Services.**~~

~~**R539-8-1A. Day Training.**~~

~~**A. Policy.**~~

~~The Division of Services for People with Disabilities shall provide habilitative services to Division-eligible individuals who require training and support in the acquisition of independent living skills. Day Training services are designed to prevent institutional placement and should include opportunities to enhance self-esteem, maximize independent functioning, facilitate skill development, increase utilization of community resources, and relieve isolation.~~

~~**B. Procedures.**~~

~~1. Individuals are referred to the service provider by the region case manager. Individuals shall be presented with all available service options and personal preference and choice shall be honored within resource constraints. Unmet service needs are documented on the waiting list and the case manager prioritizes referrals to the day training program using the waiting list in accordance with R539-3-1, Waiting List.~~

~~2. The provider will comply with:~~

- ~~a. The Home and Community Based Waiver (if applicable);~~
- ~~b. Division policies which apply;~~
- ~~c. General Department standards, and~~
- ~~d. Office of Licensing standards if site-based or Division Certification standards if non-site based.~~
- ~~e. All services must be provided by staff who meet Division provider qualification, and~~
- ~~f. Other standards identified in the contract.~~

~~3. The Purchase of Service Provider will develop a plan of services based on the individual's needs as identified through the individual assessment and planning process and agreed to at the Individual Plan meeting (See R539-3-2, The Individual Plan).~~

~~**R539-8-1B. School Vacation Habilitation Services.**~~

~~**A. Policy.**~~

~~School Vacation Habilitation services provides assistance with acquisition, retention, or improvement in self-direction,~~

~~socialization, and adaptive skills which takes place during school vacation time and when no other education programs are available. Vacation services for children will focus on the individual attaining and maintaining his/her maximum functional level in self-direction, in addition may serve to reinforce acquisition of skills as defined in therapy or other settings.~~

~~**B. Procedures.**~~

~~1. Services may be furnished four to six hours per day.~~

~~2. Services must be provided in accordance with the recipient's plan of care.~~

~~3. The provider will comply with all standards and policies as outlined in the contract.~~

~~4. School Vacation Habilitation service is not available when programs funded by the Department of Education are available.~~

~~**R539-8-2. Senior Habilitative Alternatives.**~~

~~**A. Policy.**~~

~~DSPD shall provide Habilitative Alternatives to DSPD-eligible individuals who are 55 years of age or older or who have chronic or acute medical conditions that significantly impede the individual's ability to participate in traditional day training programs. Services may also include transportation to enable an individual to attend a day training program. Habilitative Alternatives are designed to promote the ongoing development or skill maintenance for individuals who require alternatives to day training.~~

~~**B. Procedures.**~~

~~Individuals must be determined eligible for DSPD services. The need for Habilitative Alternatives is determined by the individual, and the Individual Support Plan/Individual Program Plan (ISP/IPP) team who develops a written plan of care. The case manager coordinates the services with the residential or day training provider. Placement is reviewed semi-annually.~~

~~**R539-8-3. Supported Employment.**~~

~~**A. Policy.**~~

~~The Division of Services for People with Disabilities will assist eligible individuals who want to work to obtain opportunities for supported employment.~~

~~**B. Procedures.**~~

~~1. Supported employment can be full or part time and is in a work setting where the Person works with others without disabilities, not including staff or contracted co-workers paid to support the Person. Supported employment may occur anytime during a 24-hour day. Supports assist the Person to achieve competitive employment. Competitive employment is defined as work compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by employees who are not disabled. Persons in supported employment are supported and employed consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the Person as indicated in the Person's individual service plan. A Person may be supported one-on-one or in a group. When appropriate, the provider may contract with a co-worker to provide additional support, under the direction of a job coach, as a natural extension of the workday.~~

~~2. Payment will only be made for adaptations, supervision and training required by a Person as a result of the Person's disability and will not include payment for the supervisory activities rendered as a normal part of the business setting. Documentation must be maintained, for all Persons whose supports are funded by the~~

Waiver, showing that supported employment services rendered are not available under a program funded by either the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act. Federal financial participation will not be claimed for incentive payments, subsidies, or unrelated vocational training expenses such as incentive payments made to an employer or beneficiaries to encourage or subsidize an employer's participation in a supported employment program, payments that are passed through to a beneficiary of supported employment programs, or for payments for vocational training that is not directly related to a beneficiary's supported employment program.

— 3. Provider agency standards:

— a. Persons shall be employed for a significant number of hours, at a level optimal for the Person and in accordance with the Person's capabilities and desires. This should be determined at the person centered plan meeting. The hours worked by Persons receiving supported employment should approximate the hours worked by other employees;

— b. Persons shall be compensated at minimum wage or better. If minimum wage is not feasible, compensation shall be at a commensurate wage based on a Person's productivity. Persons shall be provided benefits by the employer, which are comparable to workers who are not disabled.

— c. There shall be no more than eight Persons in any one workgroup.

— d. Assistive technology shall be used to enhance productivity when appropriate in accordance with the Americans with Disabilities Act.

— e. An individual assessment of work interests shall be conducted within 30 days of the Person's referral to the provider agency. To increase the Person's performance on the job, provider staff ensure that the job is appropriate for the Person, that the Person has had input into the decision of employment, and that the most effective training and support techniques are used. Techniques should foster the use of natural supports such as family, friends, and co-workers.

— f. Supported employment direct service staff and their immediate superiors shall be trained in the support strategies required for each Person's particular supported employment placement or job.

R539-8-4. Transportation:

— A. Policy:

Individuals receiving services shall be trained, assisted and provided opportunities to use generic transportation services available in their community. Whenever possible, public transportation, or transportation services without charge will be utilized. Whenever a Division Contracted Provider provides transportation as any part of a day or residential program, the Provider must comply with all State safety, licensure, inspection and training requirements.

— B. Procedures:

— 1. All drivers shall have the appropriate license as specified in Utah Code Section 53-3-202 and any vehicle used must be insured, as required by Utah Code Sections 41-12a-401 through 41-12a-412.

— 2. All drivers shall have current First Aid training.

— 3. Written procedures for accidents and emergencies must be kept in the vehicle(s) at all times.

— 4. All drivers, staff, and volunteers shall be trained to implement specific techniques for safe transportation of individuals who have unique medical or physical considerations.

— 5. A signed consent form shall be obtained prior to transporting a child (ages 0 through 17). The consent form must be completed by the appropriate parent, guardian, or legal representative.

— a. The signed form shall be maintained in the child's file.

— b. Children three years of age and younger being transported shall be protected by using a child safety seat or an approved restraint device. Children over three years of age may be transported using only seat belts, unless their developmental disability has caused them to be less than the average size of a three year old.

— c. Any vehicle used for the transportation of children shall be provided with door locks. Doors are to be locked at all times while the vehicle is moving.

— 6. Contractor must have current licenses, safety inspections and State Department of Transportation safety requirements on all vehicles used to transport people.

— 7. All vehicles shall be reasonably accessible if persons have physical disabilities. Special lifts and other equipment must be in safe working order.

— 8. The provider shall do the following when transporting individuals:

— a. No individual shall be permitted to remain unattended in the vehicle;

— b. Persons shall remain seated while the vehicle is in motion;

— c. Keys will be removed from the vehicle at all times when the driver is not in the driver's seat; and

— d. All persons shall use seat belts; vehicles serving individuals who use wheelchairs must have locking mechanisms to immobilize wheelchairs during travel.

R539-8-5. Residential Services:

— A. Policy:

The Division of Services for People with Disabilities will provide training, support, and opportunities for individuals with disabilities to reside as independently as possible in community settings which are typical of those in which persons without disabilities reside. Each individual who resides in a community residential living setting funded through the Division must also be enrolled in a day service or education program.

— B. Procedures:

— 1. Providers shall maintain compliance with all requirements of the Department of Human Services, Office of Licensing standards as defined in the Home and Community Based Services Waiver Provider Manual, the Division Policy Manual, and the Department Manual.

— 2. Division staff shall complete an on-site certification review of a proposed facility prior to final selection. The Office of Licensing must license the facility prior to individuals moving in, if required.

— 3. The array of community residential living settings include but are not limited to group homes, supervised apartment settings, Supported Living services, and Professional Parent services.

— a. A group home means a single residence (home) where four or more individuals reside. No more than eight individuals are allowed to reside in a single residence.

— b. A supervised apartment means an apartment setting in which individuals with disabilities reside either alone, or with one or two roommates who may or may not have a disability. No more than three individuals are allowed to reside in a single supervised apartment.

—c. Supported Living services are individually tailored to meet the desires and needs of the individuals who are receiving services in their own home or apartment. Supported Living services shall be developed to integrate individuals into services that are available to individuals in their community, rather than to set up a duplicate system of services (see R539-8-8, Supported Living).

—d. Professional Parent services shall be provided in a private residence, not the individual's own home or apartment, for one or two Division-eligible individuals. Trained staff and trained professional parents provide opportunities for the individuals to be as independent and self-sufficient as possible in a home setting (see R539-8-7, Professional Parent Services).

—4. The level and method of supervision required by each individual receiving services (as determined by the Individual Plan team) determines the level and method of supervision provided by the Contractor in each setting.

—5. An individual receiving Residential services must have a source of income (such as Supplemental Security Income) which will allow the individual to contribute toward expected living expenses.

R539-8-6. Extended Residential Habilitation:

—A. Policy.

—Extended Residential Habilitation shall be provided by the residential provider and is in lieu of traditional out-of-home programs (day services or school) when the individual's age, chronic or acute medical condition significantly impedes the individual's ability to participate in an out-of-home program.

—B. Procedures.

—1. DSPD-eligible individuals, who are recipients of residential services and who are not enrolled in full-day programs may be considered for this specialized service.

—2. Recommendation for an Extended Residential Habilitation services shall require the consensus of the IPP team. Long-term goals and objectives are written to document that the service offers a therapeutic alternative to the formal environment.

—3. The service shall be time-limited and is to be reviewed by the IPP team at a minimum, semi-annually.

—4. The service shall be subject to approval from the Division based on the identification of individual's need and the fiscal limitations of the Regional budget.

R539-8-7. Professional Parent Services.

—A. Policy.

—All children receiving residential services funded by the Division of Services for People with Disabilities will receive services in a family-like setting and in accordance with the professional parent service model. The Division will contract with service providers to locate and train professional parents and support staff to provide residential services in a private home to one to two individuals with disabilities. Professional parent homes shall assist and provide opportunities for individuals with disabilities to be as independent and self-sufficient as possible in a family-like setting.

—B. Procedures.

—1. The contractor, in conjunction with region staff, shall explain to all recipients of services and legal representatives the service offered, program objectives, basic policies and entrance criteria.

—2. A person will be eligible for professional parent services as long as the Individual Service Plan team determines the placement is in the individual's best interest.

—3. The purchase of service contractor will comply with:

—a. The Home and Community Based Waiver.

—b. Division Policy Manual and standards which apply.

—c. Office of Licensing standards, as applicable.

—d. Staff providing services must meet the qualifications specified in the Division contract, as well as all other standards identified by the contract.

—4. The home shall be adequately maintained to meet the Facility Requirements (R539-6-11).

—5. Professional parents must conform with the following:

—a. Professional parents must be at least 21 years of age.

—b. Professional parents must meet all personnel and training requirements.

—c. Professional parents and persons 18 years or older living in the home where services are provided to children must comply with R539-6-1, Personnel Requirements, in regards to Bureau of Criminal Identification screening (Utah Code Annotated Section 62A-4-514), and child and adult abuse screening (in accordance with R501-6-7). This requirement also applies to support staff not living in the home who work with children. Professional parents and persons 18 years or older living in the home where services are provided to adults with disabilities must also comply with R539-6-1, in regards to child and adult abuse screening (in accordance with R501-6-7). This requirement also applies to support staff not living in the home who work with adults with disabilities.

—6. Support staff are professionals who are responsible for giving technical support and assistance to the professional parents in the day to day operation of the home. Support staff provide consultation, and hands on training for the individual as well as relief to the professional parent. Support staff must who are 16-17 years of age must be accompanied and supervised by an adult during training.

R539-8-8. Supported Living.

—A. Policy.

—Supported Living services shall be provided for individuals who reside in their own home or apartment who require support to live independently. Individuals who receive Supported Living services may live alone, with roommates, a spouse, or children. Services may also be provided to individuals living in a family member's home if the individual is 18 years of age or older and Supported Living services are being used to assist the individual to transition into independent living. Services may include supportive assistance, habilitative training, support services that allow individuals to participate in community activities of their choice, and any other specialized, generic, or natural supports needed to promote independence. Individuals receiving residential services in other community-residential living settings are not eligible for this service.

—B. Procedures.

—1. Services and supports provided shall fall within one of the following two categories:

—a. Habilitative Training includes any training in independent living skills or community access skills.

—b. Supportive Assistance includes any type of assistance needed to support the individual to live as independently as possible.

—2. The level of services provided to each individual will be determined by the Individual Plan team, and is expected to be flexible to meet the needs of the individual. The level of services may be reduced, maintained, or increased based upon changes in the individual's skills or changes in natural and generic supports.

Changes in the level of service shall be determined by the Individual Plan team and documented on the Individual Plan as they occur.

— 3. An individual receiving Supported Living services must have a source of income which will allow the individual to meet expected living expenses.

— 4. The Provider shall develop policy and procedures that recognize self determination and choice for individuals receiving services, which shall include the following guidelines:

— a. In the event the individual's behavior threatens employment, residence, physical or mental health, or safety, the Provider shall first meet with the individual to resolve any concerns. If concerns still are not resolved, the Provider shall convene a meeting of the Individual Plan team to discuss the issue with the individual.

— b. The individual shall be offered additional services, support, or supervision (as appropriate) to assist the individual to remedy the threatening situation.

— c. The decision as to whether to accept the additional services, support, or supervision rests entirely with the individual. The Individual Plan team must respect the decision of the individual.

— d. The Provider shall maintain documentation of each situation in which additional services, support, or supervision is offered to an individual; and documentation of the individual's decision. The Individual Plan team may be convened as often as necessary to ensure that the individual has adequate opportunities to receive additional services.

R539 8 9. Assistive Technology/Environmental Modifications.

— A. Policy.

— When an individual who is eligible for Division services requires assistive technology/environmental modifications, region staff coordinating services shall assist the person in exploring possible alternatives and funding to obtain the needed assistive technology/environmental modifications. If the person is eligible for services from more than one agency or organization, region staff shall meet with and ensure service coordination across agencies.

— B. Procedures.

— 1. An Assistive Technology Device is any item, piece of equipment, or product system whether commercially produced, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities. Environmental modifications are any modifications needed to the individual's living and/or working environment to improve the person's functional capabilities.

— 2. Region staff shall assist the individual in contacting agencies/organizations which provide assistive technology devices/environmental modifications and arranging for an assessment of the individual's needs. Assistive technology/environmental modifications funded by regions shall adhere to the following expenditure guidelines. The need for assistive technology/environmental modifications shall be documented in the Individual Plan and the total amount expended annually shall receive the following prior approval as well as adhere to the State Purchasing Policy:

— a. Under \$500.00, shall be approved by the region case manager.

— b. \$500.00 to \$1999.00, shall be approved by the region supervisor.

— c. \$2000.00 to \$4999.00, shall be approved by the region director.

— d. \$5000.00 and above, shall be approved by the Division director.

R539 8 10. Personal Emergency Response Systems.

— A. Policy.

— A Personal Emergency Response System is an electronic device which enables individuals at high risk, to secure help in the event of an emergency. Individuals eligible for this service are those eligible for Division services and, who live alone, live with others who are not able to respond to an emergency, or are alone for significant parts of the day and have no regular caretaker for extended periods of time.

— B. Procedures.

— 1. Services must be provided through an authorized vendor who is on contract with the Division and licensed either as a Home Health Agency or by the Federal Communications Commission as an alarm system network.

— 2. Services must be listed on and provided in accordance with the individual's plan of care.

KEY: disabled persons, social services

May 5, 2003

Notice of Continuation December 18, 2002

62A-5-103]



Transportation, Motor Carrier, Ports of Entry **R912-6** Ports-of-Entry By-Pass Permit Provisions

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 27790

FILED: 04/01/2005, 12:35

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed new rule establishes procedures that allow the Motor Carrier Division to issue a temporary port-of-entry by-pass permit to accommodate multi-trip, highway transportation needs.

SUMMARY OF THE RULE OR CHANGE: This rule carries out an amendment passed by the Utah Legislature in the 2005 session (S.B. 144) that directed the Motor Carrier Division to adopt a method by which certain motor carriers could get permits allowing them to by-pass ports-of-entry based on their route and the number of trips they make. (DAR NOTE: S.B. 144 is found at UT L 2005 Ch 162, and was effective 03/16/2005.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 72-9-301 and 72-9-502

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Motor Carrier believes that this program will carry some costs for the state budget based upon an increase in mail received and processed by the division. The increase in mail is associated with the initial receipt of

applications. There will also be additional staff time required to review the applications. Finally, there will be additional mail received and processed and additional staff time required for review in the event that applicants elect to file an appeal. Because this program has never existed before, the division currently has no data upon which to base an estimated cost.

❖ LOCAL GOVERNMENTS: No additional costs. Local governments are not affected by the rule.

❖ OTHER PERSONS: Motor carriers may obtain savings in their overall operations because they would no longer have to make multiple stops at a port.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no additional compliance costs for motor carriers receiving by-pass privileges.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no effect on businesses, except possibly a positive one, as discussed above. John R. Njord, Executive Director

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

TRANSPORTATION
MOTOR CARRIER, PORTS OF ENTRY
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY UT 84119-5998, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at jbeadles@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/16/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 05/17/2005

AUTHORIZED BY: John R. Njord, Executive Director

R912. Transportation, Motor Carrier, Ports-of-Entry.

R912-6. Ports-of-Entry By-Pass Permit Provisions.

R912-6-1. Purpose.

This rule establishes procedures that allow the Motor Carrier Division to issue a temporary port-of-entry by-pass permit to accommodate multi-trip, highway transportation needs.

R912-6-2. Definitions.

Except for the following, this rule uses the same definitions as those listed in R909-16:

(1) "Commercial Vehicle" means a motor vehicle, vehicle, trailer, or semi trailer used or maintained for business, compensation, or profit to transport passengers or property on a highway if the commercial vehicle:

(a) has a manufacturer's gross vehicle weight rating or gross combination weight rating of 10,001 or more pounds;

(b) is designed to transport more than 15 passengers, including the driver; or

(c) is used in the transportation of hazardous materials found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C;

(2) "Intrastate" means transportation movement entirely within the state.

(3) "Multi-Trip" means two or more daily or weekly trips in the proximity of a port-of-entry.

R912-6-3. Port-of-Entry By-Pass Permits.

(1) Pursuant to Substitute Senate Bill 144, Motor Vehicle Ports-of-Entry, enacted during the 2005 General Session of the Legislature, by-pass privileges will be granted to a motor carrier for multiple motor vehicles. Decals will be issued to individual vehicles within a motor carrier's fleet.

(2) By-pass permit privileges expire one year after they are issued.

(3) Motor Carriers shall meet the "Multi-Trip" definition to receive and maintain by-pass privileges. A motor carrier may be excused from this requirement on a case-by-case basis if the carrier does not meet the "Multi-Trip" definition but is able to demonstrate to the Department that denial of a permit will cause a hardship if the vehicle has to be diverted to a port-of-entry. A Motor Carrier may appeal a denial pursuant to R912-6-7.

(4) By-pass privileges may be granted to carriers traversing multiple ports-of-entry within the same route.

(5) Unless otherwise authorized by the Department, Motor Carriers that have by-pass privilege must have a weight ticket, from a scale certified by the Department of Agriculture, available for inspection by law enforcement. Scale tickets must be electronically printed and shall specify the time, date, and unit-specific information.

(6) The Department will notify local law enforcement agencies of those carriers meeting the criteria for by-pass privileges.

R912-6-4. Enrollment Criteria.

A Motor Carrier requesting a port-of-entry by-pass permit from the Department shall have an overall company safety fitness rating of satisfactory standing, as set forth under R909-16.

R912-6-5. Assignment of Provisional Standing.

The Department may issue provisional standing to a Motor Carrier for which there is insufficient data to determine compliance with the Safety Standard or if the Motor Carrier has not received a safety rating in accordance with the Federal Motor Carrier Safety Regulations, Title 49 Part 385.

R912-6-6. Application Process.

(1) Motor Carriers requesting a port-of-entry by-pass annual permit shall make application to the Motor Carrier Division by contacting the Central Permitting Office at (801) 965-4880.

(2) Motor Carriers are required to submit routing information including point of origin, destination, and routine routes traveled.

(3) Carriers denied by-pass privileges by the Department for reasons other than conditions constituting a satisfactory standing, such as proximity, travel pattern, number of trips, etc., may appeal the Department's decision by providing additional documentation as to why the by-pass privilege should be authorized.

R912-6-7. Steering Committee - Appeal Process.

When an application for a by-pass permit is denied for reasons other than the conditions set forth in R912-6-3, the Motor Carrier may file an appeal. The appeals shall be handled by a steering committee created by the Motor Carrier Division. The steering committee shall have the powers granted to the Deputy Director in R907-1-3 for appeals from other Motor Carrier Division administrative actions. This committee's decision, if adopted by the Director of the Motor Carrier Division, will be considered a final agency order under the Utah Administrative Procedures Act.

R912-6-8. Suspensions and Revocations of Port-of-Entry By-Pass Permit.

The Department may suspend or revoke the Motor Carrier's by-pass permit if the Motor Carrier fails to meet conditions set forth under R909-16-3. If a Motor Carrier is denied by-pass privileges as

a result of the assessment of an unsatisfactory standing issued by the Department, the Motor Carrier must appeal that standing assessment pursuant to R909-16-11.

R912-6-9. Audits.

As a condition of receiving a by-pass permit, a Motor Carrier is subject to compliance reviews, safety assessments, and inspections as the Department considers necessary in order to carry out state and federal law, including Utah Code Ann. § 72-9-301.

KEY: motor carrier, permits, ports of entry, trucks**2005****72-9-301****72-9-502**

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 May 16, 2005. At its option, the agency may hold public hearings.

From the end of the waiting period through August 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.

**Commerce, Occupational and
Professional Licensing
R156-17b
Pharmacy Practice Act Rules**

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 27529
Filed: 03/31/2005, 13:01

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Following a public rule hearing and further review by the Division and the Pharmacy Board, additional amendments are being proposed.

SUMMARY OF THE RULE OR CHANGE: Throughout the rule, various grammatical and spelling changes have been made. In Section R156-17b-102, deleted the definitions for "Internet pharmacy" and "VIPPS" and renumbered the remaining subsections. Also added to the definition of "USP-NF" so that it includes Supplement 1, dated April 1, 2005. In Subsection R156-17b-301(1), regarding Class A pharmacies, deleted reference to Internet pharmacies. In Subsection R156-17b-301(2), regarding Class B pharmacies, added that methadone clinics are included in this classification. In R156-17b-301(4), regarding Class D pharmacies, deleted reference to Internet pharmacies. In Subsection R156-17b-304(3)(c)(i), deleted language regarding dates that have passed regarding pharmacy technician eligibility and training. In Subsection R156-17b-304(4)(c), added an option to use an additional certification body. In Section R156-17b-402, deleted that failing to wear a name tag was cause for an administrative penalty and renumbered remaining subsections. In Section R156-17b-612, updated Subsection R156-17b-612(13) by adding "legend drugs" for limited transfer of prescriptions with exceptions. In Section R156-17b-616, updated title of section for clarity. (DAR NOTE: This is the second change in proposed rule (CPR) for Rule R156-17b. The original proposed new rule upon which the first CPR was based was published in the December 1, 2004, issue of the Utah State Bulletin, on page 20. The first CPR upon which this second CPR is based was published in the February 15, 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 rule mentioned above; strike-out indicates text that has been deleted. You must view the first CPR, the second CPR, 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: Sections 58-17b-101 and 58-37-1, and Subsections 58-17b-601(1), 58-1-106(1)(a), and 58-1-202(1)(a)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Deletes the VIPPS (Verified Internet Pharmacy Practice Sites) Criteria Document, dated September 14, 2004, as established by NABP (National Association of Board of Pharmacy); and adds Supplement 1, dated April 1, 2005, to the USP 28-NF 23

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The Division does not anticipate any additional costs or savings beyond those previously identified in the original rule filing as a result of these additional proposed amendments.

❖ **LOCAL GOVERNMENTS:** This proposed rule does not affect local governments. The rule only affects licensed pharmacists, pharmacy interns, pharmacy technicians and pharmacies. Therefore, there is no anticipated costs or savings to local governments.

❖ **OTHER PERSONS:** The Division does not anticipate any additional costs or savings beyond those previously identified in the original rule filing and the subsequent change in proposed rule filing as a result of these additional proposed amendments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division does not anticipate any additional costs or savings beyond those previously identified in the original rule filing and the subsequent change in proposed rule filing as a result of these additional proposed amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is expected as a result of this change in proposed rules beyond the original rule filing. Russell C. Skousen, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Diana Baker at the above address, by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at dbaker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/16/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 05/17/2005

AUTHORIZED BY: J. Craig Jackson, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-17b. Pharmacy Practice Act Rules.
R156-17b-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 17b, as used in Title 58, Chapters 1 and 17b or these rules:

- (1) "ACPE" means the American Council on Pharmaceutical Education or Accreditation Council for Pharmacy Education.
- (2) "Drugs", as used in these rules, means drugs or devices.

(3) "Dispense", as defined in Subsection 58-17b-102(23), does not include transferring medications for a patient from a legally dispensed prescription for that particular patient into a daily or weekly drug container to facilitate the patient taking the correct medication.

(4) "Drug therapy management" means the review of a drug therapy regimen of a patient by one or more pharmacists for the purpose of evaluating and rendering advice to one or more practitioners regarding adjustment of the regimen.

(5) "High-risk, medium-risk, and low-risk drugs" refers to the risk to a patient's health from compounding sterile preparations, as referred to in USP-NF Chapter 797, for details of determining risk level.

(6) "Hospice facility pharmacy" means a pharmacy that supplies drugs to patients in a licensed healthcare facility for terminal patients.

(7) "Hospital clinic pharmacy" means a pharmacy that is located in an outpatient treatment area where a pharmacist or pharmacy intern is compounding, admixing, or dispensing prescription drugs, and where:

(a) prescription drugs or devices are under the control of the pharmacist, or the facility for administration to patients of that facility;

(b) prescription drugs or devices are dispensed by the pharmacist or pharmacy intern; or

(c) prescription drugs are administered in accordance with the order of a practitioner by an employee or agent of the facility. [~~(8) "Internet pharmacy" means a pharmacy licensed as either a Class A or Class D pharmacy that meets the VIPPS criteria as established by NABP and provides the following services via an Internet website, regardless of the quantum of the services:~~

~~(a) receives and fills valid prescription orders from a prescriber; or~~

~~(b) receives and fills refill requests from a patient who has a valid prescription order.]~~

(9) "Legend drug" means any drug or device that has been determined to be unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(a) "Caution: federal law prohibits dispensing without prescription";

(b) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(c) "Rx only".

(10) "Maintenance medications" means medications the patient takes on an ongoing basis.

(11) "MPJE" means the Multistate Jurisprudence Examination.

(12) "NABP" means the National Association of Boards of Pharmacy.

(13) "NAPLEX" means North American Pharmacy Licensing Examination.

(14) "Parenteral" means a method of drug delivery injected into body tissues but not via the gastrointestinal tract.

(15) "PTCB" means the Pharmacy Technician Certification Board.

(16) "Qualified continuing education", as used in these rules, means continuing education that meets the standards set forth in Section R156-17b-309.

(17) "Sterile products preparation facility" means any facility, or portion of the facility, that compounds sterile products using aseptic technique.

(18) "Unauthorized personnel" means any person who is not participating in the operational processes of the pharmacy who in some way would interrupt the natural flow of pharmaceutical care.

(19) "Unit dose" means the ordered amount of a drug in a dosage form prepared for a one-time administration to an individual and indicates the name, strength, lot number and expiration date for the drug.

(20) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 17b, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-17b-502.

(21) "USP-NF" means the United States Pharmacopeia-National Formulary (USP 28-NF 23), 2004 edition, which is official from January 1, 2005 through Supplement 1, dated April 1, 2005, which is hereby adopted and incorporated by reference. [~~(22) "VIPPS" means Verified Internet Pharmacy Practice Sites. Pharmacies displaying the VIPPS seal have demonstrated to NABP their compliance with VIPPS criteria including patient rights to privacy, authentication and security of prescription orders, adherence to a recognized quality assurance policy, and provision of meaningful consultation between patients and pharmacists. The VIPPS Criteria document, dated September 14, 2004, as established by NABP is adopted and incorporated by reference.]~~

R156-17b-301. Pharmacy Licensure Classifications - Pharmacist-in-Charge Requirements.

In accordance with Subsection 58-17b-302(4), the classification of pharmacies holding licenses are clarified as:

(1) Class A pharmacy includes all retail operations [~~including pharmacies~~] located in Utah [~~that fill from Internet prescriptions,~~] and requires a pharmacist-in-charge.

(2) Class B pharmacy includes an institutional pharmacy that provides services to a target population unique to the needs of the healthcare services required by the patient. All Class B pharmacies require a pharmacist-in-charge except for pharmaceutical administration facilities and methadone clinics. Examples of Class B pharmacies include:

(a) closed door;

(b) hospital clinic pharmacy;

(c) methadone clinics;

~~(d)~~ nuclear;

~~(e)~~ branch;

~~(f)~~ hospice facility pharmacy;

~~(g)~~ veterinarian pharmaceutical facility;

~~(h)~~ pharmaceutical administration facility; and

~~(i)~~ sterile product preparation facility.

~~(j)~~ A retail pharmacy that prepares sterile products does not require a separate license as a Class B pharmacy.

(3) Class C pharmacy includes ~~all~~ pharmacies located in Utah that are involved in:

(a) manufacturing;

(b) producing;

(c) wholesaling; and

(d) distributing

(4) Class D pharmacy includes ~~non-resident~~ pharmacies located outside the state of Utah. Class D pharmacies require a pharmacist-in-charge licensed in the state where the pharmacy is located and [~~Class D pharmacies~~] include [~~(a)~~]

Out-of-state mail order pharmacies. Facilities that have multiple locations must have licenses for each facility and every component part of a facility [~~and~~]

~~— (b) Out of state Internet pharmacies].~~

(5) Class E pharmacy includes those pharmacies that do not require a pharmacist-in-charge and include:

- (a) medical gases providers; and
- (b) analytical laboratories.

(6) All pharmacy licenses will be converted to the appropriate classification by the Division as identified in Section 58-17b-302.

(7) Each Class A and each Class B pharmacy required to have a pharmacist-in-charge shall have one pharmacist-in-charge who is employed on a full-time basis as defined by the employer, who acts as a pharmacist-in-charge for one pharmacy. However, the pharmacist-in-charge may be the pharmacist-in-charge of more than one Class A pharmacy, if the additional Class A pharmacies are not open to provide pharmacy services simultaneously.

(8) The pharmacist-in-charge shall comply with the provisions of Section R156-17b-603.

R156-17b-304. Licensure - Education Requirements.

(1) In accordance with Subsections 58-17b-303(2) and 58-17b-304(7)(c), the credentialing agency recognized to provide certification and evaluate equivalency of a foreign educated pharmacy graduate is the Foreign Pharmacy Graduate Examination Committee of the National Association of Boards of Pharmacy Foundation, or an equivalent credentialing agency as approved by the Division.

(2) In accordance with Subsection 58-17b-304(6), the preliminary education qualification for licensure as a pharmacy intern include:

- (a) a current pharmacy student who has completed at least 15 semester hours of pharmacy course work in a college or school of pharmacy accredited by the ACPE;
- (b) a graduate who has received a degree from a school or college of pharmacy which is accredited by the ACPE; or
- (c) a graduate of a foreign pharmacy school who has received a certificate of equivalency from an approved credentialing agency defined in Subsection (1).

(3) In accordance with Subsection 58-17b-305(1)(f), a pharmacy technician must complete an approved program of education and training that meets the following standards:

- (a) The didactic training program must be approved by the Division in collaboration with the Board and must address, at a minimum, the following topics:
 - (i) legal aspects of pharmacy practice including federal and state laws and rules governing practice;
 - (ii) hygiene and aseptic techniques;
 - (iii) terminology, abbreviations and symbols;
 - (iv) pharmaceutical calculations;
 - (v) identification of drugs by trade and generic names, and therapeutic classifications;
 - (vi) filling of orders and prescriptions including packaging and labeling;
 - (vii) ordering, restocking, and maintaining drug inventory;
 - (viii) computer applications in the pharmacy; and
 - (ix) non-prescription products including cough and cold, nutritional, analgesics, allergy, diabetic testing supplies, first aid, ophthalmic, family planning, foot, feminine hygiene, gastrointestinal preparations, and pharmacy care over-the-counter drugs, except those over-the-counter drugs that are prescribed by a practitioner.

(b) This training program's curriculum and a copy of the final examination shall be submitted to the Division for approval by the Board prior to starting any training session with a pharmacy

technician in training. The final examination must include questions covering each of the topics listed in Subsection (3)(a) above.

(c) Approval must be granted by the Division in collaboration with the Board before a student may start a program of study. [Specific guidelines include:

~~— (i) an individual currently participating in a program of study that was approved prior to July 1, 2004, must complete the program by April 1, 2005 to be eligible for licensure.~~

~~— (ii) a training program that accepts an individual into a program on or after January 1, 2005 must submit a copy of the curriculum no later than November 1, 2004 and have the program approved by the Division in collaboration with the Board.~~

~~— (iii) a] An individual who completes a non-approved program is not eligible for licensure.~~

(d) The training program must require at least 180 hours of practical training supervised by a licensed pharmacist in good standing with the Division and must include written protocols and guidelines for the teaching pharmacist outlining the utilization and supervision of pharmacy technicians in training that includes:

- (i) the specific manner in which supervision will be completed; and
- (ii) an evaluative procedure to verify the accuracy and completeness of all acts, tasks and functions performed by the pharmacy technician in training.

(e) An individual must complete an approved training program and successfully pass the required examinations as listed in Subsection R156-17b-302(3) within one year from the date of the first day of the training program, unless otherwise approved by the Division in collaboration with the Board.

(4) An applicant for licensure as a pharmacy technician is deemed to have met the qualification for licensure in Subsection 58-17b-305(f) if the applicant:

- (a) is currently licensed and in good standing in another state and has not had any adverse action taken on that license;
- (b) has engaged in the practice as a pharmacy technician for a minimum of 1,000 hours or equivalent experience as approved by the Division in collaboration with the Board; and
- (c) has passed and maintained current the PTCB certification or a Board approved equivalent and passed the Utah law exam.

R156-17b-402. Administrative Penalties.

In accordance with Subsection 58-17b-401(6), unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply.

- (1) Preventing or refusing to permit any authorized agent of the Division to conduct an inspection:
 - initial offense: \$500 - \$2,000
 - subsequent offense(s): \$5,000
- (2) Failing to deliver the license or permit or certificate to the Division upon demand:
 - initial offense: \$100 - \$1,000
 - subsequent offense(s): \$500 - \$2,000
- (3) Using the title pharmacist, druggist, pharmacy intern, pharmacy technician or any other term having a similar meaning or any term having similar meaning when not licensed to do so:
 - initial offense: \$500 - \$2,000
 - subsequent offense(s): \$2,000 - \$10,000
- (4) Conducting or transacting business under a name which contains as part of that name the words drugstore, pharmacy, drugs, medicine store, medicines, drug shop, apothecary, prescriptions or any other term having a similar meaning or in any manner

advertising otherwise describing or referring to the place of the conducted business or profession when not licensed to do so:

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(5) Buying, selling, causing to be sold, or offering for sale any drug or device which bears the inscription sample, not for resale, investigational purposes, or experimental use only or other similar words:

initial offense: \$1,000 - \$5,000

subsequent offense(s): \$10,000

(6) Using to the licensee's own advantage or revealing to anyone other than the Division, Board or its authorized representatives, any information acquired under the authority of this chapter concerning any method or process which is a trade secret:

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(7) Illegally procuring or attempting to procure any drug for the licensee or to have someone else procure or attempt to procure a drug:

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(8) Filling, refilling or advertising the filling or refilling of prescription drugs when not licensed to do so:

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(9) Requiring any employed pharmacist, pharmacy intern, pharmacy technician or authorized supportive personnel to engage in any conduct in violation of this chapter:

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(10) Being in possession of a drug for an unlawful purpose:

initial offense: \$500 - \$1,000

subsequent offense(s): \$1,500 - \$5,000

(11) Dispensing a prescription drug to anyone who does not have a prescription from a practitioner or to anyone who is known or should be known as attempting to obtain drugs by fraud or misrepresentation:

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(12) Selling, dispensing or otherwise trafficking in prescription drugs when not licensed to do so or when not exempted from licensure:

initial offense: \$1,000 - \$5,000

subsequent offense(s): \$10,000

(13) Using a prescription drug or controlled substance for the licensee that was not lawfully prescribed for the licensee by a practitioner:

initial offense: \$100 - \$500

subsequent offense(s): \$1,000 - \$2,500

(14) Willfully deceiving or attempting to deceive the Division, the Board or its authorized agents as to any relevant matter regarding compliance under this chapter:

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(15) Paying rebates to practitioners or any other health care provider, or entering into any agreement with a medical practitioner or any other person for the payment or acceptance of compensation for recommending the professional services of either party:

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(16) Misbranding or adulteration of any drug or device or the sale, distribution or dispensing of any outdated, misbranded, or adulterated drugs or devices:

initial offense: \$1,000 - \$5,000

subsequent offense(s): \$10,000

(17) Accepting back and redistributing any unused drugs, with the exception as provided in Section 58-17b-503:

initial offense: \$1,000 - \$5,000

subsequent offense(s): \$10,000

(18) Violating Federal Title II, PL 91, Controlled Substances Act or Title 58, Chapter 37, Utah Controlled Substances Act, or rules and regulations adopted under either act:

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(19) Failure to follow USP-NF Chapter 797 guidelines:

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(20) Failure to follow USP-NF Chapter 795 guidelines:

initial offense: \$250 - \$500

subsequent offense(s): \$500 - \$750

(21) Administering without appropriate guidelines or lawful order:

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(22) Disclosing confidential patient information in violation of the provision of the Health Insurance Portability and Accountability Act of 1996 or other applicable law:

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(23) Engaging in the practice of pharmacy without a licensed pharmacist designated as the pharmacist in charge:

initial offense: \$100 - \$500

subsequent offense(s): \$2,000 - \$10,000

(24) Failing to report to the Division any adverse action taken by another licensing jurisdiction, government agency, law enforcement agency or court:

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(25) Compounding a prescription drug for sale to another pharmaceutical facility:

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(26) Preparing a prescription drug in a dosage form which is regularly and commonly available from a manufacturer in quantities and strengths prescribed by a practitioner:

initial offense: \$500 - \$1,000

subsequent offense(s): \$2,500 - \$5,000

(27) Violating any ethical code provision of the American Pharmaceutical Association Code of Ethics for Pharmacists, October 27, 1994:

initial offense: \$250 - \$500

subsequent offense(s): \$2,000 - \$10,000

(~~29~~28) Failing to comply with the continuing education requirements set forth in these rules:

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(29) Failing to provide the Division with a current mailing address within 10 days following any change of address:

initial offense: \$50 - \$100

subsequent offense(s): \$200 - \$300

- (30) Defaulting on a student loan:
initial offense: \$100 - \$200
subsequent offense(s): \$200 - \$500
- (31) Failing to abide by all applicable federal and state law regarding the practice of pharmacy:
initial offense: \$500 - \$1,000
subsequent offense(s): \$2,000 - \$10,000
- (32) Failing to comply with administrative inspections:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- (33) Abandoning a pharmacy and/or leaving drugs accessible to the public:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- (34) Failure to return or providing false information on a self-inspection report:
initial offense: \$100 - \$250
subsequent offense(s): \$300 - \$500
- (35) Failure to pay an administrative fine:
Double the original penalty amount up to \$10,000
- (36) Any other conduct which constitutes unprofessional or unlawful conduct:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000
- ~~(37) Failure to wear a name tag:
Individual initial: \$50
Subsequent offense: \$100
Pharmacy any offense: \$100 - \$200~~
- ~~(38)37~~ Failure to maintain an appropriate ratio of personnel:
Pharmacist initial offense: \$100 - \$250
Pharmacist subsequent offense(s): \$500 - \$2,500
Pharmacy initial offense: \$250 - \$1,000
Pharmacy subsequent offense(s): \$500 - \$5,000
- ~~(39)38~~ Unauthorized people in the pharmacy:
Pharmacist initial offense: \$50 - \$100
Pharmacist subsequent offense(s): \$250 - \$500
Pharmacy initial offense: \$250 - \$500
Pharmacy subsequent offense(s): \$1,000 - \$2,000
- ~~(40)39~~ Failure to offer to counsel:
Pharmacy personnel initial offense: \$500 - \$2,500
Pharmacy personnel subsequent offense(s): \$5,000 - \$10,000
Pharmacy: \$2,000 per occurrence
- ~~(41)40~~ Violations of the laws and rules regulating operating standards (security system, unkempt facility, no hot water, etc.) in a pharmacy discovered upon inspection by the Division:
initial violation: \$50 - \$100
failure to comply within determined time: \$250 - \$500
subsequent violations: \$250 - \$500
failure to comply within established time: \$750 - \$1,000
- ~~(42)41~~ Practicing or attempting to practice as a pharmacist, pharmacist intern, or pharmacy technician or operating a pharmacy without a license:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- ~~(43)42~~ Impersonating a licensee or practicing under a false name:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- ~~(44)43~~ Knowingly employing an unlicensed person:
initial offense: \$500 - \$1,000
subsequent offense(s): \$1,000 - \$5,000
- ~~(45)44~~ Knowingly permitting the use of a license by another person:
initial offense: \$500 - \$1,000
subsequent offense(s): \$1,000 - \$5,000
- ~~(46)45~~ Obtaining a passing score, applying for or obtaining a license or otherwise dealing with the Division or Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission:
initial offense: \$100 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- ~~(47)46~~ Violating or aiding or abetting any other person to violate any statute, rule or order regulating pharmacy:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- ~~(48)47~~ Violating or aiding or abetting any other person to violate any generally accepted professional or ethical standard:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- ~~(49)48~~ Engaging in conduct that results in conviction of, or a plea of nolo contendere, or a plea of guilty or nolo contendere held in abeyance to a crime:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- ~~(50)49~~ Engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000
- ~~(51)50~~ Engaging in conduct, including the use of intoxicants or drugs, to the extent that the conduct does or may impair the ability to safely engage in practice as a pharmacist, pharmacy intern or pharmacy technician:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000
- ~~(52)51~~ Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician when physically or mentally unfit to do so:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000
- ~~(53)52~~ Practicing or attempting to practice as a pharmacist, pharmacy intern, or pharmacy technician through gross incompetence, gross negligence or a pattern of incompetency or negligence:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- ~~(54)53~~ Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician by any form of action or communication which is false, misleading, deceptive or fraudulent:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000
- ~~(55)54~~ Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the individual's scope of competency, abilities or education:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000
- ~~(56)55~~ Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the scope of licensure:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(~~57~~56) Verbally, physically or mentally abusing or exploiting any person through conduct connected with the licensee's practice:

initial offense: \$100 - \$1,000

subsequent offense(s): \$500 - \$2,000

(~~58~~57) Failure to comply with the pharmacist-in-charge standards:

initial offense: \$500 - \$2,000

subsequent offense(s) \$2,000 - \$10,000

(~~59~~58) Failure to resolve identified drug therapy management problems:

initial offense: \$500 - \$2,500

subsequent offense: \$5,000 - \$10,000

R156-17b-605. Operating Standards - Inventory Requirements.

(1) General requirements for inventory of a pharmacy shall include the following:

(a) the pharmacist-in-charge shall be responsible for taking all required inventories, but may delegate the performance of the inventory to another person or persons;

(b) the inventory records must be maintained for a period of five years and be readily available for inspection;

(c) the inventory records shall be filed separately from all other records;

(d) the inventory records shall be in a typewritten or printed form and include all stocks of legend drugs and controlled substances on hand on the date of the inventory including any that are out of date drugs and drugs in automated pharmacy systems. An inventory taken by use of a verbal recording device must be promptly transcribed;

(e) the inventory may be taken either as of the opening of the business or the close of business on the inventory date;

(f) the person taking the inventory and the pharmacist-in-charge shall indicate the time the inventory was taken and shall sign and date the inventory with the date the inventory was taken. The signature of the pharmacist-in-charge and the date of the inventory shall be documented within 72 hours or three working days of the completed initial, annual, change of ownership and closing inventory;

(g) the person taking the inventory shall make an exact count or measure all controlled substances listed in Schedule I or II;

(h) the person taking the inventory shall make an estimated ~~count~~count or measure all Schedule III, IV or V controlled substances and legend drugs, unless the container holds more than 1,000 tablets or capsules in which case an exact count of the contents must be made;

(i) the inventory of Schedule I and II controlled substances shall be listed separately from the inventory of Schedule III, IV and V controlled substances which shall be listed separately from the inventory of the legend drugs; and

(j) if the pharmacy maintains a perpetual inventory of any of the drugs required to be inventoried, the perpetual inventory shall be reconciled on the date of the inventory.

(2) Requirement for taking the initial inventory shall include the following:

(a) all pharmacies having any stock of legend drugs or controlled substances shall take an inventory on the opening day of business. Such inventory shall include all stock of legend drugs and controlled substances including any out-of-date drugs and drugs in automated pharmacy systems;

(b) in the event a pharmacy commences business with none of the drugs specified in paragraph (2)(a) of this section on hand, the pharmacy shall record this fact as the initial inventory; and

(c) the initial inventory shall serve as the pharmacy's inventory until the next completed inventory as specified in Subsection (3) of this section.

(3) Requirement for annual inventory shall be 12 months following the inventory date of each year and may be taken within four days of the specified inventory date and shall include all stocks including out-of-date drugs and drugs in automated pharmacy systems.

(4) Requirements for change of ownership shall include the following:

(a) a pharmacy that changes ownership shall take an inventory of all legend drugs and controlled substances including out-of-date drugs and drugs in automated pharmacy systems on the date of the change of ownership;

(b) such inventory shall constitute, for the purpose of this section, the closing inventory for the seller and the initial inventory for the buyer; and

(c) transfer of Schedule I and II controlled substances shall require the use of official DEA order forms (Form 222).

(5) Requirement for taking inventory when closing a pharmacy includes the pharmacist-in-charge, owner, or the legal representative of a pharmacy that ceases to operate as a pharmacy shall forward to the Division, within ten days of cessation of operation, a statement attesting that an inventory has been conducted, the date of closing and a statement attesting the manner by which legend drugs and controlled substances possessed by the pharmacy were transferred or disposed.

(6) Requirements specific to taking inventory in a Class B pharmacy shall include the following:

(a) all Class B pharmacies shall maintain a perpetual inventory of all Schedule II controlled substances which shall be reconciled according to facility policy; and

(b) the inventory of the institution shall be maintained in the pharmacy; if an inventory is conducted in other departments within the institution, the inventory shall be listed separately as follows:

(i) the inventory of drugs on hand in the pharmacy shall be listed separately from the inventory of drugs on hand in the other areas of the institution; and

(ii) the inventory of the drugs on hand in all other departments shall be identified by department.

R156-17b-609. Operating Standards - Medication Profile System.

In accordance with Subsections 58-17b-601(1) and 58-17b-604(1), the following operating standards shall apply with respect to medication profile systems:

(1) Patient profiles, once established, shall be maintained by a pharmacist in a pharmacy dispensing to patients on a recurring basis for a minimum of one year from the date of the most recent prescription filled or refilled; except that a hospital pharmacy may delete the patient profile for an inpatient upon discharge if a record of prescriptions is maintained as a part of the hospital record.

(2) Information to be included in the profile shall be determined by a responsible pharmacist at the pharmaceutical facility but shall include as a minimum:

(a) full name of the patient, address, telephone number, date of birth or age and gender;

(b) patient history where significant, including known allergies and drug reactions, and ~~[a list of medications and relevant devices obtained at the pharmacy];~~

~~(c)~~ a list of prescription drugs obtained by the patient at the pharmacy including:

- (i) name of prescription drug;
- (ii) strength of prescription drug;
- (iii) quantity dispensed;
- (iv) date of filling or refilling;
- (v) charge for the prescription drug as dispensed to the patient;

and

~~(d)~~ any additional comments relevant to the patient's drug use.

(3) Patient medication profile information shall be recorded by a pharmacist, pharmacy intern or pharmacy technician.

R156-17b-612. Operating Standards - Prescriptions.

In accordance with Subsection 58-17b-601(1), the following shall apply to prescriptions:

(1) Prescription order shall be handled according to the rules of the Federal Drug Enforcement Administration.

(2) A prescription issued by an authorized licensed practitioner, if verbally communicated by an agent of that practitioner upon that practitioner's specific instruction and authorization, may be accepted by a pharmacist or pharmacy intern.

(3) A prescription issued by a licensed prescribing practitioner, if electronically communicated by an agent of that practitioner, upon that practitioner's specific instruction and authorization, may be accepted by a pharmacist, pharmacy intern and pharmacy technician.

(4) In accordance with Section 58-17b-609, prescription files, including refill information, shall be maintained for a minimum of five years ~~[by either a manual filing of written prescriptions or by an~~ and shall be immediately retrievable in written or electronic ~~record]format~~.

(5) Prescriptions having a remaining authorization for refill may be transferred by the pharmacist at the pharmacy holding the prescription to a pharmacist at another pharmacy upon the authorization of the patient to whom the prescription was issued. The transferring pharmacist and receiving pharmacist shall act diligently to ensure that the total number of authorized refills is not exceeded.

(6) Prescriptions for terminal patients in licensed hospices, home health agencies or nursing homes may be partially filled if the patient has a medical diagnosis documenting a terminal illness and may not need the full prescription amount.

(7) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order;

(8) If there are no refill instructions on the original prescription drug order, or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner must be obtained prior to dispensing any refills.

(9) Refills of prescription drug orders for legend drugs may not be refilled after one year from the date of issuance of the original prescription drug order without obtaining authorization from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(10) Refills of prescription drug orders for controlled substances shall be done in accordance with Subsection 58-37-6(7)(f).

(11) A pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(a) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(b) either:

(i) a natural or manmade disaster has occurred which prohibits the pharmacist from being able to contact the practitioner; or

(ii) the pharmacist is unable to contact the practitioner after a reasonable effort, the effort should be documented and said documentation should be available to the Division;

(c) the quantity of prescription drug dispensed does not exceed a 72-hour supply, unless the packaging is in a greater quantity;

(d) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(e) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(f) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection; and

(g) the pharmacist affixes a label to the dispensing container as specified in Section 58-17b-602.

(12) If the prescription was originally filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(a) the patient has the prescription container label, receipt or other documentation from the other pharmacy which contains the essential information;

(b) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(c) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of (a) and (b) of this subsection; and

(d) the pharmacist complies with the requirements of Subsections (11)(c) through (g) of this section.

(13) The transfer of original prescription drug order information for legend drugs and Schedule III through V controlled substances is permissible between pharmacies on a one time basis, except transfers back to the pharmacy making the original transfer and transfers within the same corporate pharmacy chain with a computer pharmacy system which accounts for the transfer to all sites, only for the valid remaining refills except as described in Subsection R156-17b-613(9).

(a) the transfer shall be communicated directly between pharmacists or pharmacy interns or as authorized under Subsection R156-17b-613(9);

(b) both the original and the transferred prescription drug orders shall be maintained for a period of five years from the date of the last refill;

(c) the pharmacist or pharmacy intern transferring the prescription drug order shall void the prescription electronically or write void on the face of the invalidated prescription manually;

(d) the pharmacist or pharmacy intern receiving the transferred prescription drug order shall:

(i) indicate on the prescription record that the prescription was transferred electronically or manually; and

(ii) record on the transferred prescription drug order the following information:

(A) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(B) original prescription number and the number of refills authorized on the original prescription drug order;

(C) number of valid refills remaining and the date of last refill, if applicable;

(D) the name, address and, if a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred; and

(E) the name of the pharmacist or pharmacy intern transferring the prescription drug order information;

(e) the data processing system shall have a mechanism to prohibit the transfer or refilling of legend or controlled substance prescription drug orders which have been previously transferred; and

(f) a pharmacist or pharmacy intern may not refuse to transfer original prescription information to another pharmacist or pharmacy intern who is acting on behalf of a patient and who is making a request for this information as specified in Subsections (12) and (13) of this section.

R156-17b-616. Operating Standards - Class D Pharmacy - ~~[Non-Residence]~~ Out of State Mail Order Pharmacies.

(1) In accordance with Subsections 58-1-301(3) and 58-17b-306(2), an application for licensure as a Class D pharmacy shall include:

(a) a pharmacy care protocol that includes the operating standards established in Subsections R156-17b-610(1) and (8) and R156-17b-614(1) through (4);

(b) a copy of the pharmacist's license for the pharmacist-in-charge; and

(c) a copy of the most recent state inspection showing the status of compliance with the laws and regulations for physical facility, records and operations.

KEY: pharmacists, licensing, pharmacies

2005

58-17b-101

58-17b-601(1)

58-37-1

58-1-106(1)(a)

58-1-202(1)(a)



Insurance, Administration

R590-231

Workers' Compensation Market of Last Resort

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 27488
Filed: 03/24/2005, 10:32

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to make changes suggested during the last comment period.

SUMMARY OF THE RULE OR CHANGE: The definition of "Reasonable Rating Plan" is being deleted since it is not used elsewhere in the rule. In Subsection R590-231-6(1), the word "and" is being replaced with "or" in the requirement to file a separate underwriting and rating criteria "or" separate rating plan for the market of last resort. In Subsection R590-231-6(2), the word "may" is being replaced with "shall" to strengthen the requirement to include all items listed in the underwriting criteria. Also in the same subsection, the wording "but are not limited to" is being eliminated to comply with the state's rulemaking requirements that this type of wording not be included in rules. (DAR NOTE: This is the second change in proposed rule (CPR) for Rule R590-231. The original proposed new rule upon which the first CPR was based was published in the November 1, 2004, issue of the Utah State Bulletin, on page 15. The first CPR upon which this second CPR is based was published in the February 1, 2005, issue of the Utah State Bulletin, on page 55. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the first CPR, the second CPR, 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: Sections 31A-19a-404, 31A-20-103, 31A-22-1010, and 31A-2-201

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** These changes will have no impact on the work of public employees or the state's budget. No fees will be charged or eliminated and no additional filings required.

❖ **LOCAL GOVERNMENTS:** The changes in this rule will have no impact on local governments since the rule deals with the regulatory requirements of the department on their licensees.

❖ **OTHER PERSONS:** The changes made to this rule will have no fiscal impact on the industry other than the Workers' Compensation Fund who will be required to file one less report with the department. Much of this information is computer generated. The work of creating these reports initially did not anticipate the hiring of additional help and as a result the elimination of producing one of these reports should only save them time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes made to this rule will have no fiscal impact on the industry other than the Workers' Compensation Fund who will be required to file one less report with the department. Much of this information is computer generated. The work of creating these reports initially did not anticipate the hiring of additional help and as a result the elimination of producing one of these reports should only save them time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The elimination of one of these reports will create no fiscal impact on the insurance industry, the Workers' Compensation Fund or businesses associated with these insurers. 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 05/16/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 05/17/2005

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance Administration.

R590-231. Workers' Compensation Market of Last Resort.

R590-231-1. Authority.

This rule is promulgated pursuant to the following statutes:

- (1) 31A-19a-404, rulemaking authority for the recording and reporting of statistical data and experience rating data;
- (2) 31A-20-103, rulemaking authority to define lines and classes of insurance;
- (3) 31A-22-1010, rulemaking authority for reporting requirements for workers' compensation deductible policies; and
- (4) 31A-2-201, rulemaking authority to implement the provision of Title 31A.

R590-231-2. Findings and Interpretation.

(1) The commissioner finds that the legislature intended that the Workers' Compensation Fund created under Title 31A, Chapter 33, was to provide workers' compensation insurance for Utah employers who are not able to obtain such insurance in the voluntary marketplace.

(2) Based upon this finding, the commissioner interprets Section 31A-22-1001 to mean that the Workers' Compensation Fund, created under Title 31A, Chapter 33, is the insurer that provides workers' compensation insurance for the market of last resort in Utah.

R590-231-3. Purpose and Scope.

- (1) The purpose of this rule, regarding the workers' compensation market of last resort, is to:
- (a) define the workers' compensation market of last resort;
 - (b) provide eligibility criteria;

(c) provide requirements for designation of existing insured employers; and

(d) provide reporting requirements to the department and the designated rate service organization.

(2) This rule applies to the insurer for the market of last resort.

R590-231-4. Definitions.

(1) "Insurer for the market of last resort" means the Workers' Compensation Fund.

(2) "Market of Last Resort" means the workers' compensation class of risk that cannot be placed with a voluntary workers' compensation insurer because of certain underwriting restrictions or class codes.

(3) ~~["Reasonable rating plan" means a rating plan approved by the department.~~

~~—(4)—~~"Voluntary workers' compensation insurer" means an admitted workers' compensation insurer actively seeking workers' compensation business in Utah, including the Workers' Compensation Fund.

R590-231-5. Eligibility.

(1) To be eligible for the workers' compensation market of last resort, an employer must meet the underwriting and rating criteria established by the insurer for the market of last resort.

(2) An employer being insured by the insurer for the market of last resort remains eligible for the market of last resort until the employer obtains workers' compensation insurance from a voluntary workers' compensation insurer.

R590-231-6. Underwriting and Rating.

(1) The insurer for the market of last resort shall file separate underwriting and rating criteria for the market of last resort ~~[, and] or~~ a separate rating plan for the market of last resort.

(2) Underwriting criteria for eligibility in the market of last resort ~~[may] shall~~ include ~~[but are not limited to]:~~

- (a) premium size;
- (b) class code and risk characteristics; and
- (c) loss and payroll experience.

(3) Policy files for employers eligible for the market of last resort must include the underwriting criteria or follow underwriting protocols used for placement in the market of last resort.

R590-231-7. Designation and Reporting.

(1) Because the Workers' Compensation Fund is a voluntary workers' compensation insurer, and the insurer for the market of last resort, the Workers' Compensation Fund shall:

(a) Designate its existing insured employers as insured in the voluntary workers' compensation market or in the market of last resort; and

(b) Such designation can be done:

- (i) immediately; or
- (ii) as each employer renews; or
- (iii) at the time a new application is made for workers' compensation coverage.

(2) The insurer for the market of last resort shall report its data, including market of last resort data to the designated rate service organization. Such reporting shall be timely and consistent with the designated rate service organization's reporting requirements for all workers' compensation insurance carriers operating in Utah.

(3) Upon request, the insurer for the market of last resort shall make available to the Insurance Department, information about the market of last resort. Requested information may include the market of last resort data reported to the designated rate service organization.

R590-231-8. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 45 days from the effective date of the rule.

R590-231-9. Severability.

If any provision or clause of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the

rule and the application of any provision to other persons or circumstances shall not be affected.

KEY: workers' compensation insurance

2005

31A-2-201

31A-19a-404

31A-20-103

31A-22-1010



End of the Notices of Changes in Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (*Utah Code* Subsection 63-46a-7(1) (2001)).

As with a PROPOSED RULE, a 120-DAY RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the 120-DAY RULE including the name of a contact person, justification for filing a 120-DAY RULE, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (· · · · ·) indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A 120-DAY RULE is effective for 120 days or until it is superseded by a permanent rule.

Because 120-DAY RULES are effective immediately, the law does not require a public comment period. However, when an agency files a 120-DAY RULE, it usually files a PROPOSED RULE at the same time, to make the requirements permanent. Comment may be made on the proposed rule. Emergency or 120-DAY RULES are governed by *Utah Code* Section 63-46a-7 (2001); and *Utah Administrative Code* Section R15-4-8.

Commerce, Securities **R164-9-1** Registration by Coordination

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE No.: 27777
FILED: 03/25/2005, 11:12

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this emergency rule is to provide a means for the sale of real estate-related private placements as "securities" within the state of Utah.

SUMMARY OF THE RULE OR CHANGE: The change adds an additional registration category, the Limited Purpose Registration, to the existing rule governing securities registrations by coordination.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-1-9

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** No material effect. The rule merely allows an existing category of private placement securities offerings to be treated as "registered" securities solely for the purpose of qualifying for the exemptive provision given in Subsection 61-2-3(3)(a)(ii) of the Utah Real Estate Act. It merely allows promoters to continue existing sales practices pending further legislative action.

❖ **LOCAL GOVERNMENTS:** No material effect. The rule merely allows an existing category of private placement securities offerings to be treated as "registered" securities solely for the purpose of qualifying for the exemptive provision given in Subsection 61-2-3(3)(a)(ii) of the Utah Real Estate Act. It

merely allows promoters to continue existing sales practices pending further legislative action.

❖ **OTHER PERSONS:** No material effect. The rule merely allows an existing category of private placement securities offerings to be treated as "registered" securities solely for the purpose of qualifying for the exemptive provision given in Subsection 61-2-3(3)(a)(ii) of the Utah Real Estate Act. It merely allows promoters to continue existing sales practices pending further legislative action.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No material effect. The rule merely allows an existing category of private placement securities offerings to be treated as "registered" securities solely for the purpose of qualifying for the exemptive provision given in Subsection 61-2-3(3)(a)(ii) of the Utah Real Estate Act. It merely allows promoters to continue existing sales practices pending further legislative action.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no material adverse fiscal impact on businesses. As stated above, this rule merely allows promoters and their securities dealers to continue to sell certain real estate-related investments as private placement securities under Utah law. S.B. 64, in its current form, may allow many such private placement promoters to comply with state law governing real estate or with federal law governing securities, but not both simultaneously. This rule simply preserves existing sales procedures in anticipation of additional clarifying action by the legislature. Russell Skousen, Executive Director

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare.

S.B. 64, passed in the recent legislative session, excluded many real estate-related transactions from the definition of "security" under the Utah Uniform Securities Act and instead

classified the transactions as real estate. Federal law, however, still classifies the transactions as securities. Prior to the passage of S.B. 64, many major interstate promoters of these types of investment offerings had already taken steps to comply with state and federal securities laws by setting up selling networks of licensed securities broker-dealers. However, as a result of this unintended conflict between how these transactions are defined in state and in federal law, an entire class of commercial transactions has been revealed to be at risk of violating either federal securities laws or state real estate licensing law absent the creation of some form of temporary safe harbor. Promoters' securities dealers can no longer sell the offering in this state without violating applicable local real estate licensing laws. However, if promoters place their offerings in the hands of real estate licensees for commissioned selling within Utah, they will, under federal law, be placing their securities in the hands of persons who are not licensed to sell them. Thus, commerce in this area cannot be conducted in a manner that gives the participants confidence that they will be in full compliance with all relevant state and federal rules. In anticipation of follow-up legislative action that should effectively remedy this difficulty within the applicable 120-day period, the Division, under the authority of Subsection 61-1-9(9) and Section 61-1-24, is proposing to promulgate this Emergency Rule amending Section R164-1-9 to provide for a "Limited Purpose Registration." The sole purpose of this new registration type is to provide to promoters and to securities broker-dealers who sell private placement securities containing a real estate component the means to qualify for the exemption from real estate licensure contained in Subsection 61-2-3(3)(a)(ii) of the Utah Real Estate Act. Registering a security under the Limited Purpose Registration provision will not otherwise change the character of the private placement offering in any other way. (DAR NOTE: S.B. 64 is found at UT L 2005 Ch 258, and will be effective 05/02/2005.)

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:

Benjamin N Johnson at the above address, by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

THIS RULE IS EFFECTIVE ON: 03/25/2005

AUTHORIZED BY: David Preece, Director

R164. Commerce, Securities.

R164-9. Registration by Coordination.

R164-9-1. Registration by Coordination.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-9, 61-1-11 and 61-1-24.

(2) This rule sets forth the procedure and requirements to be met when applying for registration by coordination in Utah. Any security for which a registration statement under the Securities Act of 1933 or a notification under Regulation A, 17 C.F.R. sections 230.251 through 230.263 (1994), has been filed with the SEC in connection with the same offering, or any security for which a Form D (17 CFR section 239.500) has been filed with the SEC pursuant to Regulation D, Rule 506 (17 CFR section 230.506) may be registered by coordination under Section 61-1-9. A registration by coordination in connection with securities for which a Form D has been filed with the SEC pursuant to Regulation D, Rule 506 shall be limited in its scope and effectiveness by the Limited Purpose Registration provisions in paragraph (J) of this rule.

(3) The rule also authorizes optional electronic filing of registration statements and allows an optional modification of the term of effectiveness to facilitate simultaneous electronic filing.

(4) ~~[Offerings]~~ Except for Limited Purpose Registrations under paragraph (J), offerings which are registered, as opposed to being exempt from registration, in less than 20 states, including the state of Utah, are subject to the requirements of Section R164-11-1. Failure to comply with the requirements of Section R164-11-1 may be grounds for denial, suspension or revocation of effectiveness of a registration statement filed under Section 61-1-9.

(B) Definitions

(1) "Designee" means any person or entity authorized and recognized by the Division in this rule to accept filings on behalf of the Division by electronic or other means of communication.

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

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

(4) "Registration Statement" means the registration statement filed under the Securities Act of 1933 or the notification filed under Regulation A, 17 C.F.R. sections 230.251 through 230.263 (1994), or SEC Form D, 17 C.F.R. section 239.500, filed under Regulation D, Rule 506, 17 C.F.R. section 230.506.

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

(6) "SRD" means the Securities Registration Depository, Inc.

(C) Registration requirements

(1) An issuer may register securities by submitting to the Division or its designee the following:

(1)(a) One original application on NASAA Form U-1 - Uniform Application to Register Securities;

(1)(b) One copy of the registration statement, including exhibits, together with all amendments as filed with the SEC under the Securities Act of 1933~~[-06]~~, SEC Regulation A, or SEC Form D and such other documents as the SEC may require to be filed in connection with Form D;

(1)(c) One original NASAA Form U-2 - Uniform Consent to Service of Process;

(1)(d) A fee as specified in the Division's fee schedule; and

(1)(e) Any additional documents or information which the Division requests.

(2) No document or application shall be deemed to be filed, and the ten working day period referred to in Subsection 61-1-9(3)(b) shall not begin, until all items required by Subparagraph (C)(1) have been received by the Division or its designee.

(3) Where the Division notifies the registrant in writing of any missing or incomplete documents or information, or other deficiencies in the registration statement, registrant must respond promptly. If the registrant does not respond to the Division in writing within 30 calendar days of the mailing date of the Division's letter, the registration statement will be deemed incomplete and action may be taken to deny the effectiveness of the registration statement, and to impose a fine.

(D) Additional notification to the Division

The registrant shall notify the Division within two business days upon the receipt of any stop order, denial, order to show cause, suspension or revocation order, injunction or restraining order, or similar order entered or issued by any state or other regulatory authority or by any court, concerning the securities covered by this application or other securities of the issuer currently being offered to the public.

(E) Effective date

(1) The registration statement becomes effective as set forth in Subsection 61-1-9(3).

(2) The registration statement is effective for one year from its effective date with the Division.

(3) A registration statement which does not become effective within one year from the filing date may be deemed materially incomplete and action may be taken to deny effectiveness to the registration statement.

(4) To facilitate the coordination of expiration dates with other states, the issuer may request a specific term of effectiveness which does not exceed one year.

(F) Post effective amendments

A registration statement or a Form D may be amended by filing with the Division or its designee an amended NASAA Form U-1 - Uniform Application to Register Securities, and an amended registration statement. The amendment becomes effective when the Division so orders.

(G) Re-registration

The registrant may re-register securities, for which a registration statement or Form D is about to expire, by submitting to the Division or its designee, a NASAA Form U-1, an updated registration statement or Form D and the filing fee specified in the Division's fee schedule.

(H) Closing report

Within 30 days of the close of the offering or the expiration of the registration statement, whichever occurs first, the registrant shall file a closing report. The closing report must be filed on Division Form 9-1.

(I) Recognized designee

(1) The Division authorizes and recognizes the SRD as designee to receive filings under this rule on behalf of the Division, including but not limited to applications, registration statements and fees.

(2) The designation provided in this rule is for the sole purpose of receiving filings on behalf of the Division and then transmitting those documents to the Division, or for any other purpose which the Division may prescribe by order or release.

(J) Limited Purpose Registration

(1) An effective registration by coordination for which an application was made in reliance upon the filing of Form D with the SEC pursuant to Regulation D, Rule 506 shall be referred to as a Limited Purpose Registration.

(2) A security registered by coordination as a Limited Purpose Registration shall be regarded as a security registered under the Utah Uniform Securities Act solely for the purpose of applying the exemptive provision found in Section 61-2-3(3)(a)(ii).

(3) Except with regards to the application of the exemptive provision referenced in subparagraph (J)(2), a security registered by coordination as a Limited Purpose Registration shall otherwise retain its character as a private placement under SEC Regulation D, Rule 506 and shall be offered and sold within this state in full compliance with Regulation D and all other federal and state regulations applicable to such offerings.

KEY: securities, securities regulation

March 25, 2005

Notice of Continuation December 19, 2002

61-1-9

61-1-11

61-1-24



End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

Agriculture and Food, Marketing and Conservation **R65-10** Agriculture Resource Development Loans (ARDL)

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 27787
FILED: 03/31/2005, 16:16

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 4-18-5(2)(d), authorizes the commission to adopt rules to carry out the duties outlined in Subsections 4-18-5(1)(d), (e), and (f). Subsection 4-8-15(1)(e) authorizes the commission to approve and make loans from the Agriculture Resource Development Fund.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the general operating practices by which the Agriculture Resource Development Loan (ARDL) program shall function and the responsibility of the Loan Coordinator or Loan Administrator in issuing contracts for agriculture development. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Richard Sandberg or Marolyn Leetham at the above address, by phone at 801-538-7030 or 801-538-7114, by FAX at 801-538-4940 or 801-538-7126, or by Internet E-mail at rsandberg@utah.gov or mleetham@utah.gov

AUTHORIZED BY: Leonard M. Blackham, Commissioner

EFFECTIVE: 03/31/2005



Insurance, Administration **R590-140** Reference Filings of Rate Service Organization Prospective Loss Costs

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 27785
FILED: 03/31/2005, 13:50

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsections 31A-2-201(1) and 31A-2-201(3)(a) provide general rulewriting authority to the commissioner to adopt rules that will implement provisions of the insurance code. This rule focuses on the requirements for a rate service organization filing loss cost factors for property and casualty insurers as specified in Sections 31A-19a-203 and 31A-19a-205.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is important that this rule continue in force. It is a key component in the regulation of loss cost filings developed by rate service organizations such as the National Council on Compensation Insurance (NCCI), Insurance Services Office (ISO) and other rating organizations licensed to do business in Utah. This rule applies to all lines of property and casualty insurance coverages.

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

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 03/31/2005



Insurance, Administration
R590-164
Uniform Health Billing Rule

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

DAR FILE No.: 27784
FILED: 03/31/2005, 13:43

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-22-614.5 requires all insurers that offer health insurance to use a uniform claim form and uniform billing and claim codes adopted by the commissioner in accordance with the Utah Administrative Rulemaking Act. In Subsection R590-164-4(A), the rule sets the electronic claim forms to be used uniformly and Section R590-164-6 sets the standards for electronic data interchange transaction between providers of health services and health insurers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: On October 28, 2002, the department filed this rule correcting definitions and incorporating additional electronic interchange standards. During the comment period, the department received three written comments. One explained the process being used to set the health billing standards, who was involved, and how the information was being exposed to the public. Another comment expressed concern that the process amounted to a monopoly and that the process did not allow for public comment. An insurer who was not aware that their company was represented on the committee setting standards suggested that the state adopt Health Insurance Portability and Accountability Act (HIPAA) standards and that only a few members of the standards committee are affected by those same standards.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule eliminates the need for every insurer to create their own billing form that health providers are required to complete and file before receiving reimbursement for their services. Uniformity in health billing forms reduces confusion, processing time, and cost. Therefore, this rule should be continued. It should be noted that the organization that sets the standards has representation from major insurance carriers and health care providers. Before adopting standards, they are exposed to the insurance industry and medical organizations for their input. As many as 700 responses have been received regarding a change in standards. Utah exceeds the national average of those participating electronically in the exchange of health billings. Ninety percent of medical billings in Utah are sent electronically.

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

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 03/31/2005



Natural Resources, Oil, Gas and
Mining; Coal
R645-105
Blaster Training, Examination and
Certification

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

DAR FILE NO.: 27778
FILED: 03/25/2005, 11:50

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 40-10-1 et seq. contains the Utah Coal Regulatory Program statutory authority. The entire regulatory program is a collection of laws and rules which constitute the basis of the State's primacy under the aegis of the (federal) Office of Surface Mining. A major component of the coal primacy program is the blaster certification segment which is formed by the rule that is the subject of this five-year review notice.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received since the last five year review of this rule in June of 2000.

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 needed to maintain the structure of the Blaster Certification Program, an important safety training measure for the use of explosives at Utah coal mines. Blaster training is an integral part of the coal regulatory program. The continuation of this rule will also assure that the State maintains the Utah Coal Regulatory Program and the State's primacy role in the regulation of coal mining and reclamation. State primacy keeps regulatory decision making at the State and not the Federal level and within the Utah view of natural resources management.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 03/25/2005



Natural Resources, Oil, Gas and
Mining; Coal
R645-400
Inspection and Enforcement: Division
Authority and Procedures

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

DAR FILE NO.: 27779
FILED: 03/25/2005, 11:51

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 40-10-1 et seq. contains the Coal Regulatory Program statutory authority for the State of Utah. The entire regulatory program is a collection of laws and rules which constitute the State's primacy program under the aegis of the (federal) Office of Surface Mining. A major component of the coal primacy program is the inspection and enforcement segment which is formed by the rule that is the subject of this five-year review notice.

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 on this rule since it was last reviewed in June of 2000.

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 needed to maintain the structure of the Inspection and Enforcement segment of the Utah Coal Regulatory Program and will, in turn, assure State primacy in the regulation of coal mining and reclamation. State primacy keeps regulatory decision making at the State and not the Federal level and within the Utah view of natural resources management. Therefore, this rule should be continued.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 03/25/2005

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Workforce Services, Workforce Information and Payment Services **R994-204** Included Employment

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 27789
FILED: 04/01/2005, 11:06

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: Section 35A-4-204 defines employment and describes what types of employment are covered by the Employment Security Act. Rule R994-204 is necessary to define terms used or implied by that section. Section 35A-1-104 authorizes the Department of Workforce Services to adopt rules. Subsection 35A-1-104(4) authorizes the Department to establish eligibility standards for its programs. Subsection 35A-4-502(1)(b) authorizes the Department to make rules necessary for the administration of the Employment Security Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: We have received no written comments during the last five years on this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is essential for an employer to know when it must pay unemployment taxes and benefits. A claimant also needs to know when he or she is covered under the Act. An employer, for instance, cannot just call an "employee" an independent contractor to avoid compliance with the Act. The rule describes a true independent contractor relationship to insure uniform application of the statute and notice to the party of what they need to do to comply. Section 35A-4-204 defines employment covered by the Employment Security Act. The rule is necessary to describe how the Department of Workforce Services determines when the statute applies in situations like domestic service, independent contractor, and outside commissioned salesmen. It also defines when an employer,

doing business in Utah and other states, will be covered in Utah. Therefore, this rule should be continued.

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

WORKFORCE SERVICES
WORKFORCE INFORMATION
AND PAYMENT SERVICES
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

AUTHORIZED BY: Tani Downing, Executive Director

EFFECTIVE: 04/01/2005

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Workforce Services, Workforce Information and Payment Services **R994-205** Exempt Employment

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 27791
FILED: 04/01/2005, 12:44

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 35A-4-205 provides that some types of employment are exempt from the Employment Security Act. Section 35A-1-104 authorizes the Department of Workforce Services to adopt rules. Subsection 35A-1-1-4(4) authorizes the Department to establish eligibility standards for its programs. Subsection 35A-4-502(1)(b) authorizes the Department to make rules necessary for the administration of the Employment Security Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: We have received no written comments during the last five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to explain when employment is not covered under the Act. It defines necessary terms like "domestic service" and when family members are exempt. Therefore, this rule should be continued. There has been no opposition to this rule.

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

WORKFORCE SERVICES
WORKFORCE INFORMATION
AND PAYMENT SERVICES
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

AUTHORIZED BY: Tani Downing, Executive Director

EFFECTIVE: 04/01/2005

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Workforce Services, Workforce Information and Payment Services

R994-206

Agricultural Labor

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 27796
FILED: 04/01/2005, 13:35

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 35A-4-206 provides that services performed in agricultural labor are not covered by the Employment Security Act except under certain circumstances. This rule helps define what is considered agriculture so employers, employees, and Department of

Workforce Services employees know how to determine which claimants are covered and which are not. Section 35A-1-104 authorizes the Department of Workforce Services to adopt rules. Subsection 35A-1-104(4) authorizes the Department to establish eligibility standards for its programs. Subsection 35A-4-502(1)(b) authorizes the Department to make rules necessary for the administration of the Employment Security Act.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary to determine which services are performed in "agriculture" and whether or not those services are covered under the Act. Therefore, this rule should be continued.

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

WORKFORCE SERVICES
WORKFORCE INFORMATION
AND PAYMENT SERVICES
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

AUTHORIZED BY: Tani Downing, Executive Director

EFFECTIVE: 04/01/2005

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

NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (*Utah Code* Section 63-46a-9 (1996)). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules. The extension permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed extensions for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date. The five-year review extension is governed by *Utah Code* Subsection 63-46a-9(4) and (5) (1996).

Environmental Quality

Drinking Water

No. 27780 (filed 03/28/2005 at 3:30 p.m.): R309-305 (was R309-302). Certification Rules for Backflow Technicians.

ENACTED OR LAST REVIEWED: 04/10/2000 (No. 22730, 5YR, filed 04/10/2000 at 10:27 a.m., published 05/01/2000)

EXTENDED DUE DATE: 08/08/2005

No. 27781 (filed 03/28/2005 at 3:33 p.m.): R309-405. Compliance and Enforcement: Administrative Penalty.

ENACTED OR LAST REVIEWED: 04/17/2000 (No. 22604, NEW, filed 01/14/2000 at 8:32 a.m., published 02/01/2000)

EXTENDED DUE DATE: 08/15/2005

End of the Notices of Five-Year Review Extensions Section

NOTICES OF RULE EFFECTIVE DATES

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

Abbreviations

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

Agriculture and Food

Animal Industry

No. 27687 (AMD): R58-1-7. Swine.
Published: February 15, 2005
Effective: March 18, 2005

Regulatory Services

No. 27569 (AMD): R70-540-14. Exemptions.
Published: December 15, 2004
Effective: March 18, 2005

Education

Administration

No. 27705 (AMD): R277-410. Accreditation of Schools.
Published: March 1, 2005
Effective: April 1, 2005

No. 27706 (AMD): R277-411. Elementary School Accreditation.
Published: March 1, 2005
Effective: April 1, 2005

No. 27707 (AMD): R277-412. Junior High and Middle School Accreditation.
Published: March 1, 2005
Effective: April 1, 2005

No. 27708 (AMD): R277-413. Accreditation of Secondary Schools, Alternative or Special Purpose Schools.

Published: March 1, 2005
Effective: April 1, 2005

No. 27710 (AMD): R277-705-6. Utah Basic Skills Competency Testing Requirements and Procedures.

Published: March 1, 2005
Effective: April 1, 2005

No. 27662 (AMD): R277-713. Concurrent Enrollment of High School Students in College Courses.

Published: February 15, 2005
Effective: March 21, 2005

Money Management Council

Administration

No. 27689 (AMD): R628-11. Maximum Amount of Public Funds Allowed to be Held by any Qualified Depository.
Published: February 15, 2005
Effective: March 22, 2005

Regents (Board Of)

Administration

No. 27666 (AMD): R765-604. New Century Scholarship.
Published: February 15, 2005
Effective: March 22, 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 April 1, 2005, the effective dates of which are no later than April 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>Facilities Construction and Management</u>					
R23-1	Procurement of Construction	27603	AMD	03/15/2005	2005-2/2
R23-2	Procurement of Architect-Engineer Services	27605	AMD	03/15/2005	2005-2/7
R23-3	Planning and Programming for Capital Projects	27615	AMD	03/15/2005	2005-2/9
R23-4	Suspension/Debarment and Contract Performance Review Committee	27610	AMD	03/15/2005	2005-2/10
R23-26	Dispute Resolution	27614	NEW	03/15/2005	2005-2/12
<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

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<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
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
R58-1-7	Swine	27687	AMD	03/18/2005	2005-4/8
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>Marketing and Conservation</u>					
R65-10	Agriculture Resource Development Loans (ARDL)	27787	5YR	03/31/2005	2005-8/56
<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
R70-440-2	Adopt by Reference	27667	NSC	03/01/2005	Not Printed
R70-540-14	Exemptions	27569	AMD	03/18/2005	2004-24/7
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

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<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
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rules	27698	AMD	04/04/2005	2005-5/2
R156-31b	Nurse Practice Act Rules	27600	AMD	02/17/2005	2005-2/36
R156-38	Residence Lien Restriction and Lien Recovery Fund Rules	27752	5YR	03/15/2005	2005-7/75
R156-47b	Massage Therapy Practice Act Rules	27548	AMD	03/07/2005	2004-24/7
R156-47b	Massage Therapy Practice Act Rules	27548	CPR	03/07/2005	2005-3/51
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
R156-60c	Professional Counselor Licensing Act Rules	27749	5YR	03/14/2005	2005-7/75
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
<u>Securities</u>					
R164-2	Investment Adviser - Unlawful Acts	27732	5YR	02/28/2005	2005-6/34
R164-9-1	Registration by Coordination	27777	EMR	03/25/2005	2005-8/53
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
R277-410	Accreditation of Schools	27705	AMD	04/01/2005	2005-5/8
R277-411	Elementary School Accreditation	27706	AMD	04/01/2005	2005-5/10
R277-412	Junior High and Middle School Accreditation	27707	AMD	04/01/2005	2005-5/13
R277-413	Accreditation of Secondary Schools, Alternative or Special Purpose Schools	27708	AMD	04/01/2005	2005-5/16
R277-422	State Supported Voted Leeway, Local Board-Approved Leeway and Local Board Leeway for Reading Improvement Programs	27702	NSC	03/01/2005	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
R277-705-6	Utah Basic Skills Competency Testing Requirements and Procedures	27710	AMD	04/01/2005	2005-5/19
R277-713	Concurrent Enrollment of High School Students in College Courses	27662	AMD	03/21/2005	2005-4/14
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

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Environmental Quality					
<u>Air Quality</u>					
R307-110-11	Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide	27429	AMD	03/04/2005	2004-19/37
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	2005-7/76
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
R414-33C	Targeted Case Management for the Homeless	27703	NEW	04/07/2005	2005-5/23
R414-34-6	Qualified Providers	27589	AMD	02/01/2005	2005-1/21
R414-36-6	Qualified Providers	27591	AMD	02/01/2005	2005-1/22
R414-61	Home and Community Based Waivers	27741	5YR	03/11/2005	2005-7/77
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

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<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
R527-40	Retained Support	27648	AMD	03/14/2005	2005-3/30
R527-210	Guidelines for Setting Child Support Awards	27534	REP	01/04/2005	2004-23/49
R527-255	Substantial Change in Circumstances	27647	AMD	03/14/2005	2005-3/30
R527-475	State Tax Refund Intercept	27641	5YR	01/06/2005	2005-3/59
<u>Services for People with Disabilities</u>					
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R539-2	Service Coordination	27626	NEW	03/12/2005	2005-2/45
R539-3	Rights and Protections	27627	NEW	03/12/2005	2005-2/47
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R595-1	General Provisions	27330	CPR	02/01/2005	2004-24/59
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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
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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
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
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R657-47	Trust Fund Permits (5YR EXTENSION)	27637	NSC	03/04/2005	Not Printed
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R746-360-9	One-Time Distributions from the Fund	27302	CPR	01/04/2005	2004-23/54
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R765-604	New Century Scholarship	27666	AMD	03/22/2005	2005-4/22
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R850-23	Sand, Gravel and Cinders Permits	27609	NEW	04/01/2005	2005-2/72
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R850-25	Mineral Leases and Materials Permits	27606	NEW	04/01/2005	2005-2/81
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R986-700	Child Care Assistance	27660	AMD	04/07/2005	2005-4/26
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R994-204	Included Employment	27789	5YR	04/01/2005	2005-8/59
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ABBREVIATIONS

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

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<u>acceptable documentation</u>					
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	27706	R277-411	AMD	04/01/2005	2005-5/10
	27707	R277-412	AMD	04/01/2005	2005-5/13
	27708	R277-413	AMD	04/01/2005	2005-5/16
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	27611	R850-20	REP	04/01/2005	2005-2/50

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	27613	R850-22	NEW	04/01/2005	2005-2/65
	27606	R850-25	NEW	04/01/2005	2005-2/81
	27604	R850-26	NEW	04/01/2005	2005-2/84
	27601	R850-27	NEW	04/01/2005	2005-2/86
	27602	R850-130	REP	04/01/2005	2005-2/89
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<u>aesthetics</u>					
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	27429	R307-110-11	CPR	03/04/2005	2005-3/52
	27343	R307-110-12	CPR	01/04/2005	2004-23/53
	27343	R307-110-12	AMD	01/04/2005	2004-17/12
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<u>art</u>					
Capitol Preservation Board (State), Administration	27632	R131-9	NEW	03/03/2005	2005-2/26
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Environmental Quality, Drinking Water	27617	R309-305	NSC	02/01/2005	Not Printed
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<u>big game seasons</u> Natural Resources, Wildlife Resources	27550	R657-5	AMD	01/15/2005	2004-24/38
<u>bituminous-asphaltic sands</u> School and Institutional Trust Lands, Administration	27613	R850-22	NEW	04/01/2005	2005-2/65
<u>board members</u> Commerce, Administration	27633	R151-1	NEW	02/15/2005	2005-2/29
<u>boating</u> Natural Resources, Parks and Recreation	27560	R651-202	AMD	01/15/2005	2004-24/28
	27559	R651-205-7	AMD	01/15/2005	2004-24/29
	27664	R651-206	NSC	02/01/2005	Not Printed
	27561	R651-206	AMD	01/15/2005	2004-24/29
	27562	R651-209	REP	01/15/2005	2004-24/32
	27563	R651-211	AMD	01/15/2005	2004-24/33
	27564	R651-212	AMD	01/15/2005	2004-24/34
	27565	R651-215	AMD	01/15/2005	2004-24/35
<u>boilers</u> Labor Commission, Safety	27616	R616-2-3	AMD	03/07/2005	2005-2/49
<u>building codes</u> Commerce, Occupational and Professional Licensing	27489	R156-56	AMD	01/01/2005	2004-21/6
	27490	R156-56-704	AMD	01/01/2005	2004-21/11
<u>building inspection</u> Commerce, Occupational and Professional Licensing	27489	R156-56	AMD	01/01/2005	2004-21/6
	27490	R156-56-704	AMD	01/01/2005	2004-21/11
<u>capitol-preservation</u> Capitol Preservation Board (State), Administration	27711	R131-1	5YR	02/16/2005	2005-6/33
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	27590	R616-3-3	AMD	02/01/2005	2005-1/30
<u>child care</u> Workforce Services, Employment Development	27660	R986-700	AMD	04/07/2005	2005-4/26
<u>child support</u> Human Services, Recovery Services	27640	R527-10	5YR	01/06/2005	2005-3/58
	27648	R527-40	AMD	03/14/2005	2005-3/30
	27642	R527-40	5YR	01/06/2005	2005-3/59
	27534	R527-210	REP	01/04/2005	2004-23/49
	27647	R527-255	AMD	03/14/2005	2005-3/30

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	27604	R850-26	NEW	04/01/2005	2005-2/84
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	27489	R156-56	AMD	01/01/2005	2004-21/6
	27490	R156-56-704	AMD	01/01/2005	2004-21/11
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	27662	R277-713	AMD	03/21/2005	2005-4/14
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<u>disabled persons</u> Human Services, Services for People with Disabilities	27651	R539-2	REP	03/12/2005	2005-3/31
	27652	R539-3	REP	03/12/2005	2005-3/34
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	27694	R58-21	5YR	02/03/2005	2005-5/29
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<u>educational testing</u> Education, Administration	27547	R277-473	AMD	01/04/2005	2004-23/43
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	27521	R426-13	AMD	02/01/2005	2004-23/47
	27584	R426-14-303	NSC	02/01/2005	Not Printed
	27522	R426-15	AMD	02/01/2005	2004-23/48
<u>emergency preparedness</u> Education, Administration	27539	R277-400	NSC	01/01/2005	Not Printed
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<u>employment tests</u> Workforce Services, Workforce Information and Payment Services	27789	R994-204	5YR	04/01/2005	2005-8/59
	27791	R994-205	5YR	04/01/2005	2005-8/59
	27796	R994-206	5YR	04/01/2005	2005-8/60
<u>energy assistance</u> Community and Economic Development, Community Development, Community Services	27418	R202-202-202	AMD	01/12/2005	2004-19/24
	27421	R202-203-324	AMD	01/12/2005	2004-19/25
	27419	R202-203-328	AMD	01/12/2005	2004-19/26
	27420	R202-207-702	AMD	01/12/2005	2004-19/27
<u>engineers</u> Administrative Services, Facilities Construction and Management Capitol Preservation Board (State), Administration	27605	R23-2	AMD	03/15/2005	2005-2/7
	27711	R131-1	5YR	02/16/2005	2005-6/33
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	27625	R35-2	AMD	03/04/2005	2005-2/18
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