

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114, telephone (801) 538-3218, FAX (801) 538-1773. To view rules information, and on-line versions of the division's publications, visit: <http://www.rules.utah.gov/>

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Division of Administrative Rules, Salt Lake City 84114

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TABLE OF CONTENTS

1. SPECIAL NOTICES

Governor, Administration: Governor's Executive Order 2005-0009: Wildland Fire Management.....	1
Governor, Administration: Governor's Executive Order 2005-0010: Declaring a State of Emergency Affecting Federal-Aid Highways in Eastern and Southern Utah.....	2
Governor, Administration: Governor's Executive Order 2005-0011: Declaring a State of Emergency from Spring Storms and Rapid Snowmelt Flooding In Uintah County and Iron County	2

2. NOTICES OF PROPOSED RULES

Administrative Services

Fleet Operations

No. 28025 (Amendment): R27-3-12. Daily Motor Pool Sedans, Four Wheel Drive Sport Utility Vehicle (4x4 SUV), Cargo Van, Multi-Passenger Van and Alternative Fuel Vehicle Lease Criteria	5
---	---

Commerce

Occupational and Professional Licensing

No. 27993 (Amendment): R156-16a-302b. Qualifications for Licensure - Examination Requirements.....	6
No. 27992 (Amendment): R156-31b. Nurse Practice Act Rules	6
No. 27987 (Amendment): R156-38. Residence Lien Restriction and Lien Recovery Fund Rules	13

Real Estate

No. 28031 (Amendment): R162-105. Scope of Authority.....	20
No. 28030 (Amendment): R162-106. Professional Conduct.....	23

Environmental Quality

Air Quality

No. 28029 (Amendment): R307-101-2. Definitions	24
--	----

Radiation Control

No. 27991 (Amendment): R313-16. General Requirements Applicable to the Installation, Registration, Inspection, and Use of Radiation Machines.....	26
--	----

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 27977 (Amendment): R414-200-3. Services Available	28
---	----

Human Services

Child and Family Services

No. 27981 (Amendment): R512-75. Rules Governing Adjudication of Consumer Complaints	29
No. 27982 (Amendment): R512-306. Independent Living Services, Education and Training Voucher Program.....	31

Labor Commission

Occupational Safety and Health

No. 28013 (Amendment): R614-1-4. Incorporation of Federal Standards	33
---	----

TABLE OF CONTENTS

Natural Resources

Water Rights

No. 28032 (New Rule): R655-14. Administrative Procedures for Enforcement Proceedings
Before the Division of Water Rights.....34

Transportation

Program Development

No. 28024 (New Rule): R926-7. Scenic Byways42

3. NOTICES OF 120-DAY (EMERGENCY) RULES

Education

Administration

No. 28026: R277-602. Special Needs Scholarships - Funding and Procedures47

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

Health

Administration

No. 27990: R380-40. Local Health Department Minimum Performance Standards51

Health Care Financing, Coverage and Reimbursement Policy

No. 27985: R414-19A. Coverage for Dialysis Services by a Free-Standing State
Licensed Dialysis Facility.....51

No. 27986: R414-33. Targeted Case Management Services52

Medical Examiner

No. 27988: R448-10. Unattended Death and Reporting Requirements52

No. 27989: R448-20. Access to Medical Examiner Reports.....53

Insurance

Administration

No. 28027: R590-171. Surplus Lines Procedures Rule.....53

No. 28028: R590-199. Plan of Orderly Withdrawal Rule Relating to Health Benefit Plans.....54

Labor Commission

Antidiscrimination and Labor, Antidiscrimination

No. 28003: R606-3. Nondiscrimination Clause to be used in Contracts Entered into by
the State of Utah and its Agencies54

No. 28004: R606-4. Advertising55

No. 28005: R606-5. Employment Agencies.....55

No. 28002: R606-6. Regulation of Practice and Procedure on Employer Reports and Records56

5. NOTICES OF RULE EFFECTIVE DATES.....57

6. RULES INDEX.....59

SPECIAL NOTICES

Governor's Executive Order 2005-0009: Wildland Fire Management

EXECUTIVE ORDER

Wildland Fire Management

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

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

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

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

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

NOW, THEREFORE, I, Jon M. Huntsman, Jr., Governor of the State of Utah by virtue of the power vested in me by the constitution and the laws of the State of Utah, do hereby order that:

It is found, determined and declared that a "State of Emergency" exists statewide due to the threat to public safety, property, natural resources and the environment for thirty days, effective as of June 10, 2005, requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

IN WITNESS, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 10th day of June, 2005

(State Seal)

Jon M. Huntsman
Governor

ATTEST:

Gary R. Herbert
Lieutenant Governor

2005/0009

Governor's Executive Order 2005-0010: Declaring a State of Emergency Affecting Federal-Aid Highways in Eastern and Southern Utah

EXECUTIVE ORDER

Declaring a State of Emergency Affecting Federal-Aid Highways in Eastern and Southern Utah

WHEREAS, beginning in May 2005, Uintah County and Iron County experienced floods and rapid run-off as a result of extremely heavy rains and rapid snowmelt. As a consequence, the State of Utah has sustained severe damage to its road systems and Federal-Aid Highways which include bridges, roadbeds, and other facilities;

WHEREAS, The eastern and southern parts of the State of Utah have sustained extensive damage requiring immediate repairs. Such conditions constitute an emergency as contemplated by the terms of 23 U.S.C. Sections 120(e) and 125;

NOW THEREFORE, I, Jon M. Huntsman, Jr., Governor of the State of Utah;

DO HEREBY ORDER that a "State of Emergency" exists in Uintah County and Iron County as a result of flooding and runoff conditions and consequent danger to life and damage to property, including Federal-Aid Highways. The immediate repair and reconstruction of the damaged highways is vital to the security, well-being, and health of the citizens of the State of Utah; and the Federal Highway Division Administrator is hereby requested to concur in the declaration of this emergency.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 8th day of June, 2005.

(State Seal)

Jon M. Huntsman, Jr.
Governor

ATTEST:

Gary R. Herbert
Lieutenant Governor

2005/0010

Governor's Executive Order 2005-0011: Declaring a State of Emergency from Spring Storms and Rapid Snowmelt Flooding In Uintah County and Iron County

EXECUTIVE ORDER

Declaring a State of Emergency from Spring Storms and Rapid Snowmelt Flooding In Uintah County and Iron County

WHEREAS, beginning in May 2005, Uintah County and Iron County experienced floods and rapid run-off as a result of extremely heavy rains and fast snowmelt.

WHEREAS, the peak flows on these rivers are at or near their historical highs;

WHEREAS, these floods have caused riverbank erosion and severe damage to public roads and bridges;

WHEREAS, as a consequence of the continuous threat of floods, immediate attention is necessary to alleviate the situation which threatens the safety, health, and welfare of the citizens of Uintah County and Iron County;

WHEREAS, these conditions satisfy the criteria for a disaster emergency within the Disaster Response and Recovery Act of 1981; and

NOW THEREFORE, I, Jon M. Huntsman, Jr., Governor of the State of Utah;

DO HEREBY ORDER that a "State of Emergency" exists due to the aforesaid spring storms and flooding in Uintah County and Iron County, and that such areas are declared to be a disaster requiring aid, assistance, and relief available pursuant to the provisions of State statutes, and the State Emergency Operations Plan, which is hereby activated.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 8th day of June, 2005.

(State Seal)

Jon M. Huntsman, Jr.
Governor

ATTEST:

Gary R. Herbert
Lieutenant Governor

2005/0011

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between June 2, 2005, 12:00 a.m., and June 15, 2005, 11:59 p.m. are included in this, the July 1, 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 August 1, 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 October 29, 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.

**Administrative Services, Fleet
Operations
R27-3-12**

**Daily Motor Pool Sedans, Four Wheel
Drive Sport Utility Vehicle (4x4 SUV),
Cargo Van, Multi-Passenger Van and
Alternative Fuel Vehicle Lease Criteria**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28025

FILED: 06/14/2005, 12:29

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to correct text discrepancy between a Fleet Operations Rule and Risk Management's 15-passenger Van policy.

SUMMARY OF THE RULE OR CHANGE: The change in the text of Subsection R27-3-12(2)(c) removes the specific number of occupants allowed in a 15-passenger to language that says the total number of occupants is the number recommended by the Division of Risk Management.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63A-9-401(1)(ii)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no aggregate anticipated cost or savings to the state budget. The amendment simply clarifies aspects of a rule to be consistent with long-standing Risk Management policies governing 15-passenger van occupant safety and agency responsibilities.

❖ LOCAL GOVERNMENTS: There is no aggregate anticipated cost or savings to local governments budget. The amendment simply clarifies aspects of a rule to be consistent with long-standing Risk Management policies governing 15-passenger van occupant safety and agency responsibilities.

❖ OTHER PERSONS: There is no aggregate anticipated cost or savings to other persons. The amendment simply clarifies aspects of a rule to be consistent with, long-standing Risk Management policies governing 15-passenger van occupant safety and agency responsibilities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs for affected persons are anticipated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change has no fiscal or adverse impact on those agencies having to comply. It simply corrects an error between existing Fleet Operations and Risk Management policies. D'Arcy Dixon Pignanelli, Executive Director

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

ADMINISTRATIVE SERVICES
FLEET OPERATIONS
Room 4120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Steve Saltzgiver at the above address, by phone at 801-538-3452, by FAX at 801-538-1773, or by Internet E-mail at ssaltzgiver@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/01/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 08/02/2005

AUTHORIZED BY: Steve Saltzgiver, Director

R27. Administrative Services, Fleet Operations.

R27-3. Vehicle Use Standards.

R27-3-12. Daily Motor Pool Sedans, Four Wheel Drive Sport Utility Vehicle (4x4 SUV), Cargo Van, Multi-Passenger Van and Alternative Fuel Vehicle Lease Criteria.

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

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

(a) Requests for a four wheel drive sport utility vehicle (4x4 SUV) may be granted with written approval from an employee's supervisor.

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

(c) Requests for a fifteen (15) passenger van may be granted in the event that the driver is going to be transporting more than six authorized passengers. Under no circumstances shall the total number of occupants exceed ~~ten (10) individuals,~~ the maximum number of passengers recommended by the Division of Risk Management.

(3) Cargo vans shall be used to transport cargo only. Passengers shall not be transported in cargo area of said vehicles.

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

KEY: state vehicle use

~~December 20, 2004~~ 2005

53-13-102

63A-9-401(1)(c)(viii)



Commerce, Occupational and
Professional Licensing
R156-16a-302b
Qualifications for Licensure -
Examination Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27993

FILED: 06/06/2005, 14:55

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division is proposing amendments to this rule to reflect the current National Board of Examiners in Optometry examination categories and contents.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-16a-302b(1)(b), the content of the current National Board of Examiners in Optometry examination is amended to reflect that Part II now includes the Treatment and Management of Ocular Disease (TMOD) section. Subsection R156-16a-302b(1)(d) was amended to reflect that the stand-alone TMOD examination section is required if the optometrist was licensed prior to 1993.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-16a-101, and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division will incur minimal costs, approximately \$50, to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ LOCAL GOVERNMENTS: Proposed amendments do not apply to local governments as the amendments only apply to optometrists who may be applying for licensure in Utah.

❖ OTHER PERSONS: The Division anticipates no costs or savings to individuals who may apply for licensure as an optometrist in Utah as a result of these proposed amendments since the proposed amendments are simply updating the current existing national board examination categories.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division anticipates no costs or savings to individuals who may apply for licensure as an optometrist in Utah as a result of these proposed amendments since the proposed amendments are simply updating the current existing national board examination categories.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing updates the rules in accordance with current national examination requirements. No fiscal impact to businesses is anticipated 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
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:

Noel Taxin at the above address, by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at ntaxin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/01/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 08/02/2005

AUTHORIZED BY: J. Craig Jackson, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-16a. Optometry Practice Act Rules.
R156-16a-302b. Qualifications for Licensure - Examination
Requirements.**

In accordance with Subsection 58-16a-302(1)(f), the examinations which must be successfully passed by applicants for licensure as an optometrist are:

(1) the National Board of Examiners in Optometry examinations to include the following sections:

(a) Part I (Basic Science);

(b) Part II (Clinical Science and the Treatment and Management of Ocular Disease (TMOD));

(c) Part III (Patient Care); and

(d) The [~~Treatment and Management of Ocular Disease (TMOD)~~]stand-alone TMOD if licensed prior to 1993.

KEY: optometrists, licensing

~~May 17, 2001~~2005

Notice of Continuation July 23, 2002

58-16a-101

58-1-106(1)(a)

58-1-202(1)(a)

Commerce, Occupational and
Professional Licensing
R156-31b
Nurse Practice Act Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27992

FILED: 06/06/2005, 14:44

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As a result of H.B. 12 and H.B. 243 which were recently passed during the 2005 Legislative Session, amendments to the rule are being proposed. (DAR NOTE: H.B. 12 is found at UT L 2005 Ch 50, and was effective 05/02/2005. H.B. 243 is found at UT L 2005 Ch 134, and was effective 05/02/2005.)

SUMMARY OF THE RULE OR CHANGE: As a result of H.B. 12 (2005) deleting the regulation of health care assistants from the Nurse Practice Act (Title 58, Chapter 31b), amendments are made throughout the rule to delete any reference to health care assistants or any definitions associated with health care assistants. Also, as a result of H.B. 243 (2005) deleting the regulation of Licensed Practical Nurse-Geriatric Care Managers (LPN-GCM), amendments are made throughout the rule to delete any reference to LPN-GCM. Also, several statute citations have been updated in the rule. In Section R156-31b-202, a Nursing Education Peer Committee to the Nursing Board has been established as allowed under Subsection 58-1-203(1)(f).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-31b-101, and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Deletes "Nursing: Scope and Standards of Practice", 2003 edition, as published by the American Nurses Association

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division will incur minimal costs, approximately \$50, to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. Any decrease in revenue to the state budget as a result of no longer regulating health care assistants and LPN-GCM has already been addressed in the fiscal notes attached to H.B. 12 and H.B. 243 (2005).

❖ LOCAL GOVERNMENTS: The Division has determined that the proposed amendments may have a savings effect on local governments if a local government paid for any application and/or renewal fees for health care assistants that may be employed by any local government agency. The Division is unable to determine if any local governments paid the application and/or renewal fees for health care assistants.

❖ OTHER PERSONS: As a result of the passage of H.B. 12 and H.B. 243 (2005), individuals will no longer need to be registered as health care assistants or LPN-GCM. Anyone who would have been required to be regulated before the statute changes will save the costs of initial licensure application and renewal fees. It should be noted that the LPN-Geriatric Care Manager pilot program was never implemented so there is no impact on anyone regarding this change. An individual who was previously required to be registered as a health care assistant will no longer be required to pay an application fee of \$69, which includes the criminal background check fee, and the renewal fee of \$27 every 2 years. The Division estimates it received approximately 2,000 new applications for registration as a health care assistant for an

aggregate savings amount of \$138,000 on a yearly basis to the regulated occupation in application fees that would have been paid. The Division had approximately 9,000 registered health care assistants at the time the legislation was passed which would result in an aggregate savings amount of \$243,000 every 2 years to the regulated occupation as a result of renewal fees not being paid for health care assistants.

COMPLIANCE COSTS FOR AFFECTED PERSONS: An individual who was previously required to be registered as a health care assistant will no longer be required to pay an application fee of \$69, which includes the criminal background check fee, and the renewal fee of \$27 every 2 years.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In accordance with the passage of H.B. 12 and H.B. 243 in the 2005 General Session, this rule filing eliminates all references to health care assistants and geriatric care managers. No fiscal impact to businesses is anticipated beyond those already considered in the passage of these bills. This rule filing also corrects code and rule references and establishes standards for advisory peer review committees as required by statute. No fiscal impact to businesses is anticipated as a result of these technical and clarifying amendments. 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:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/01/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 08/02/2005

AUTHORIZED BY: J. Craig Jackson, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-31b. Nurse Practice Act Rules.
R156-31b-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 31b, as defined or used in these rules:

- (1) "Absolute discharge", as used in Subsection 58-31b-302([7]5)(b), means the completion of criminal probation or parole.
- (2) "Activities of daily living (ADLs)" means those personal activities in which individuals normally engage or are required for

~~an individual's well being whether performed by them alone, by them with the help of others, or for them by others, including eating, dressing, mobilizing, toileting, bathing, and other acts or practices to which an individual is subjected while under care in a regulated facility or under the orders of a licensed health care practitioner in a private residence.]~~

([3]2) "Affiliated with an institution of higher education", as used in Subsection 58-31b-601(1), means the general and science education courses required as part of a nursing education program are provided by an educational institution which is approved by the Board of Regents or an equivalent governmental agency in another state or a private educational institution which is regionally accredited by an accrediting board recognized by the Council for Higher Education Accreditation of the American Council on Education; and the nursing program and the institution of higher education are affiliated with each other as evidenced by a written contract or memorandum of understanding.

([4]3) "APRN" means an advanced practice registered nurse.

([5]4) "Approved continuing education" in Subsection R156-31b-303(3) means:

(a) continuing education that has been approved by a professional nationally recognized approver of health related continuing education;

(b) nursing education courses taken from an approved education program as defined in Section R156-31b-601; and

(c) health related course work taken from an educational institution accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education", 2003-04 edition, published by the American Council on Education.

([6]5) "Approved education program" as defined in Subsection 58-31b-102(3) is further defined to include any nursing education program published in the documents entitled "Directory of Accredited Nursing Programs", 2003, published by the National League for Nursing Accrediting Commission, which are hereby adopted and incorporated by reference as a part of these rules.

([7]6) "CCNE" means the Commission on Collegiate Nursing Education.

([8]7) "CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

([9]8) "COA", as used in these rules, means the Council of Accreditation of Nurse Anesthesia Education Programs.

([10]9) "Clinical mentor/preceptor", as used in Section R156-31b-607, means an individual who is employed by a clinical health care facility and is chosen by that agency, in collaboration with the Parent-Program, to provide direct, on-site supervision and direction to a nursing student who is engaged in a clinical rotation, and who is accountable to both the clinical agency and the supervisory clinical faculty member.

([11]10) "Comprehensive nursing assessment", as used in Section ~~R156-31b-704~~, means an extensive data collection (initial and ongoing) for individuals, families, groups and communities addressing anticipated changes in patient/client conditions as well as emergent changes in patient's/client's health status; recognizing alterations to previous patient/client conditions; synthesizing the biological, psychological, spiritual and social aspects of the patient's/client's condition; evaluating the impact of nursing care; and using this broad and complete analysis to make independent decisions and identification of health care needs; plan nursing interventions, evaluate need for different interventions and the need to communicate and consult with other health team members.

([12]11) "Contact hour" means 50 minutes.

([13]12) "CRNA" means a certified registered nurse anesthetist.

([14]13) "Delegation" means transferring to an individual the authority to perform a selected nursing task in a selected situation. The nurse retains accountability for the delegation.

([15]14) "Direct supervision" is the supervision required in Subsection 58-31b-306(1)(a)(iii) and means:

(a) the person providing supervision shall be available on the premises at which the supervisee is engaged in practice; or

(b) if the supervisee is specializing in psychiatric mental health nursing, the supervisor may be remote from the supervisee if there is personal direct voice communication between the two prior to ~~administering or~~ prescribing a prescription drug.

([16]15) "Disruptive behavior", as used in these rules, means conduct, whether verbal or physical, that is demeaning, outrageous, or malicious and that places at risk patient care or the process of delivering quality patient care. Disruptive behavior does not include criticism that is offered in good faith with the aim of improving patient care.

([17]16) "Focused nursing assessment", as used in Section R156-31b-703, means an appraisal of an individual's status and situation at hand, contributing to the comprehensive assessment by the registered nurse, supporting ongoing data collection and deciding who needs to be informed of the information and when to inform. [~~—(18) "Generally recognized scope and standards of nursing practice", as referred to in Subsections 58-31b-102(17), (18), and (19), means the "Nursing Scope and Standards of Practice", 2003, published by the American Nurses Association, which is hereby adopted and incorporated by reference, or as established by the professional community.]~~

([19]17) "Licensure by equivalency" as used in these rules means licensure as a licensed practical nurse after successful completion of course work in a registered nurse program which meets the criteria established in Sections R156-31b-601 and R156-31b-603.

([20]18) "LPN" means a licensed practical nurse.

([21]19) "NLNAC" means the National League for Nursing Accrediting Commission.

([22]20) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

([23]21) "Non-approved education program" means any foreign nurse education program.

([24]22) "Other specified health care professionals", as used in Subsection 58-31b-102([12]13), who may direct the licensed practical nurse means:

(a) advanced practice registered nurse;

(b) certified nurse midwife;

(c) chiropractic physician;

(d) dentist;

(e) osteopathic physician;

(f) physician assistant;

(g) podiatric physician;

(h) optometrist;

(i) certified registered nurse anesthetist.

([25]23) "Parent-program", as used in Section R156-31b-607, means a nationally accredited, Board of Nursing approved nursing education program that is providing nursing education (didactic, clinical or both) to a student and is responsible for the education program curriculum, and program and student policies.

~~(26)~~24 "Patient surrogate", as used in Subsection R156-31b-502(4), means an individual who has legal authority to act on behalf of the patient when the patient is unable to act or decide for himself, including a parent, foster parent, legal guardian, or a person designated in a power of attorney.]

~~(27) "Personal assistance and care", as used in Subsection 58-31b-102(11), means acts or practices by an individual to personally assist or aid another individual in activities of daily living. These activities do not include those services provided by physical therapy, occupational therapy, or recreational therapy aides/assistants.]~~

~~(28)~~25 "Postsecondary school", as used in Section R156-31b-607, means a program registered and in good standing with the Utah Department of Commerce, Division of Consumer Protection, that offers coursework to individuals who have graduated from high school or have been awarded a GED.

~~(29)~~26 "Psychiatric mental health nursing specialty", as used in Subsection 58-31b-302(3)(g), includes psychiatric mental health nurse specialists and psychiatric mental health nurse practitioners.

~~(30)~~27 "RN" means a registered nurse.

~~(31)~~28 "Supervision" in Section R156-31b-701 means the provision of guidance or direction, evaluation and follow up by the licensed nurse for accomplishment of a task delegated to unlicensed assistive personnel or other licensed individuals.

~~(32)~~29 "Supervisory clinical faculty", as used in Section R156-31b-607, means one or more individuals employed by an approved nursing education program who meet the accreditation and Board of Nursing specific requirements to be a faculty member and are responsible for the overall clinical experiences of nursing students and may supervise and coordinate clinical mentors/preceptors who provide the actual direct clinical experience.

~~(33)~~30 "Unprofessional conduct" as defined in Title 58, Chapters 1 and 31b, is further defined in Section R156-31b-502.

R156-31b-202. Advisory Peer Committee created - Membership - Duties.

(1) In accordance with Subsection[s] 58-1-203(~~(6)~~1)(~~f~~)-~~and 58-31b-202(2)~~, there is created the Psychiatric Mental Health Nursing Peer Committee and the Nursing Education Peer Committee.

(2) Psychiatric Mental Health Nursing Peer Committee.

(a) The [whose] duties and responsibilities of the Psychiatric Mental Health Nursing Peer Committee are to:

(i) [include] review[ing] applications for licensure as an APRN [applications,] specializing in psychiatric mental health nursing when appropriate; and

(ii) [, and advising] advise the board and division regarding practice issues.

(~~2~~)b The composition of the [~~committee~~] Psychiatric Mental Health Nursing Peer Committee shall be:

(~~a~~)i three APRNs specializing in psychiatric mental health nursing;

(~~b~~)ii at least one member shall be a faculty member actively teaching in a psychiatric mental health nursing program; and

(~~e~~)iii at least one member shall be actively participating in the supervision of an APRN intern.

(3) Nursing Education Peer Committee.

(a) The duties and responsibilities of the Nursing Education Peer Committee are to:

(i) review applications for approval of nursing education programs;

(ii) advise the board and division regarding standards for approval of nursing education programs; and

(iii) assist the board and division to conduct site visits of nursing education programs.

(b) The composition of the Nursing Education Peer Committee shall be:

(i) five RNs or APRNs actively involved in nursing education; and

(ii) members of the board may also serve on this committee.

R156-31b-302d. Qualifications for Licensure - Criminal Background Checks.

(1) In accordance with Subsection 58-31b-302(~~(7)~~5), an applicant for licensure under this chapter who is applying for licensure from a foreign country shall meet the fingerprint requirement by submitting:

(a) a visa issued within six months of making application to Utah; or

(b) a copy of a criminal background check from the country in which the applicant has immigrated, provided the check was completed within six months of making application to Utah.

R156-31b-306. Inactive Licensure.

(1) A licensee may apply for inactive licensure status in accordance with Sections 58-1-305 and R156-1-305.

(2) To reactivate a license which has been inactive for five years or less, the licensee must document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3).

(3) To reactivate a RN or LPN license which has been inactive for more than five years but less than 10 years, the licensee must document active licensure in another state or jurisdiction, pass the required examinations as defined in Section R156-31b-302c within six months prior to making application to reactivate a license, or successfully complete an approved re-entry program.

(4) To reactivate a RN or LPN license which has been inactive for 10 or more years, the licensee must document active licensure in another state or jurisdiction, or pass the required examinations as defined in Section R156-31b-302c within six months prior to making application to reactivate a license and successfully complete an approved re-entry program.

(5) To reactivate an APRN or CRNA license which has been inactive for more than five years, the licensee must document active licensure in another state or jurisdiction or pass the required examinations as defined in Section R156-31b-302c within six months prior to making application to reactivate a license.

R156-31b-307. Reinstatement of Licensure.

(1) In accordance with Section 58-1-308 and Subsection R156-1-308(~~e~~)g(3)(b), an applicant for reinstatement of a license which has been expired for five years or less, shall document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3).

(2) The Division may waive the reinstatement fee for an individual who was licensed in Utah and moved to a Nurse Licensure Compact party state, who later returns to reside in Utah.

R156-31b-401. Disciplinary Proceedings.

(1) An individual licensed as a LPN who is currently under disciplinary action and qualifies for licensure as an RN may be issued an RN license under the same restrictions as the LPN.

(2) A nurse [~~or health care assistant~~] whose license [~~or registration~~] is suspended, may under Subsection 58-31b-401[~~(2)(d)~~ may] petition the division at any time that he can demonstrate that he can resume competent practice.

R156-31b-402. Administrative Penalties.

In accordance with Subsections 58-31b-102(1) and 58-31b-402(1), unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

- (1) Using a protected title:
initial offense: \$100 - \$300
subsequent offense(s): \$250 - \$500
- (2) Using any title that would cause a reasonable person to believe the user is licensed [~~or registered~~] under this chapter:
initial offense: \$50 - \$250
subsequent offense(s): \$200 - \$500
- (3) Conducting a nursing education program in the state for the purpose of qualifying individuals for licensure without board approval:
initial offense: \$1,000 - \$3,000
subsequent offense(s): \$5,000 - \$10,000
- (4) Practicing or attempting to practice nursing [~~or health care assisting~~] without a license [~~or registration~~] or with a restricted license [~~or registration~~]:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- (5) Impersonating a licensee [~~or registrant~~], or practicing under a false name:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- (6) Knowingly employing an unlicensed person:
initial offense: \$500 - \$1,000
subsequent offense(s): \$1,000 - \$5,000
- (7) Knowingly permitting the use of a license [~~or registration~~] by another person:
initial offense: \$500 - \$1,000
subsequent offense(s): \$1,000 - \$5,000
- (8) Obtaining a passing score, applying for or obtaining a license [~~or registration~~], or otherwise dealing with the division or board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- (9) violating or aiding or abetting any other person to violate any statute, rule, or order regulating nursing [~~or health care assisting~~]:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- (10) 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
- (11) Engaging in conduct that results in convictions of, or a plea of nolo contendere, or a plea of guilty or nolo contendere held in abeyance to a crime of moral turpitude or other crime:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- (12) 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

(13) Engaging in conduct, including the use of intoxicants, drugs to the extent that the conduct does or may impair the ability to safely engage in practice as a nurse [~~or a health care assistant~~]:

initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(14) Practicing or attempting to practice as a nurse [~~or health care assistant~~] when physically or mentally unfit to do so:

initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(15) Practicing or attempting to practice as a nurse [~~or health care assistant~~] through gross incompetence, gross negligence, or a pattern of incompetency or negligence:

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(16) Practicing or attempting to practice as a nurse [~~or health care assistant~~] by any form of action or communication which is false, misleading, deceptive, or fraudulent:

initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(17) Practicing or attempting to practice as a nurse [~~or health care assistant~~] beyond the individual's scope of competency, abilities, or education:

initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(18) Practicing or attempting to practice as a nurse [~~or health care assistant~~] beyond the scope of licensure:

initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(19) Verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's [~~or registrant's~~] practice:

initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(20) Failure to safeguard a patient's right to privacy:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(21) Failure to provide nursing service in a manner that demonstrates respect for the patient's human dignity:

initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(22) Engaging in sexual relations with a patient:
initial offense: \$5,000 - \$10,000
subsequent offense(s): \$10,000

(23) Unlawfully obtaining, possessing, or using any prescription drug or illicit drug:

initial offense: \$200 - \$1,000
subsequent offense(s): \$500 - \$2,000

(24) Unauthorized taking or personal use of nursing supplies from an employer:

initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(25) Unauthorized taking or personal use of a patient's personal property:

initial offense: \$200 - \$1,000
subsequent offense(s): \$500 - \$2,000

(26) Knowingly entering false or misleading information into a medical record or altering a medical record:

initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

- (27) Unlawful or inappropriate delegation of nursing care:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000
- (28) Failure to exercise appropriate supervision:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000
- (29) Employing or aiding and abetting the employment of unqualified or unlicensed person to practice:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000
- (30) Failure to file or impeding the filing of required reports:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000
- (31) Breach of confidentiality:
initial offense: \$200 - \$1,000
subsequent offense(s): \$500 - \$2,000
- (32) Failure to pay a penalty:
Double the original penalty amount up to \$10,000
- (33) Prescribing a schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan:
initial offense: \$500 - \$1,000
subsequent offense(s): \$500 - \$2,000
- (34) Failure to confine practice within the limits of competency:
initial offense: \$500 - \$1,000
subsequent offense(s): \$500 - \$2,000
- (35) Any other conduct which constitutes unprofessional or unlawful conduct:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000
- (36) Engaging in a sexual relationship with a patient surrogate:
initial offense: \$1,000 - \$5,000
subsequent offense(s): \$5,000 - \$10,000
- (37) Engaging in practice in a disruptive manner:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000.

R156-31b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

- (1) failing to destroy a license which has expired due to the issuance and receipt of an increased scope of practice license;
- (2) a RN issuing a prescription for a prescription drug to a patient except in accordance with the provisions of Section 58-17[a]b-620, or as may be otherwise provided by law;
- (3) failing as the nurse accountable for directing nursing practice of an agency to verify any of the following:
 - (a) that standards of nursing practice are established and carried out so that safe and effective nursing care is provided to patients;
 - (b) that guidelines exist for the organizational management and management of human resources needed for safe and effective nursing care to be provided to patients;
 - (c) nurses' knowledge, skills and ability and determine current competence to carry out the requirements of their jobs;
 - (4) engaging in sexual contact with a patient surrogate concurrent with the nurse/patient relationship unless the nurse affirmatively shows by clear and convincing evidence that the contact:
 - (a) did not result in any form of abuse or exploitation of the surrogate or patient; and
 - (b) did not adversely alter or affect in any way:

- (i) the nurse's professional judgment in treating the patient;
- (ii) the nature of the nurse's relationship with the surrogate; or
- (iii) the nurse/patient relationship; and
- (5) engaging in disruptive behavior in the practice of nursing[; ~~(6) unauthorized disclosure of confidential information obtained as a result of practice as a health care assistant; and~~ ~~(7) engaging in any regulated health care practice for which the person is not registered, certified, or licensed].~~

R156-31b-701. Delegation of Nursing Tasks.

In accordance with Subsection 58-31b-102([40]11)(g), the delegation of nursing tasks is further defined, clarified, or established as follows:

- (1) The nurse delegating tasks retains the accountability for the appropriate delegation of tasks and for the nursing care of the patient/client. The licensed nurse shall not delegate any task requiring the specialized knowledge, judgment and skill of a licensed nurse to an unlicensed assistive personnel. It is the licensed nurse who shall use professional judgment to decide whether or not a task is one that must be performed by a nurse or may be delegated to an unlicensed assistive personnel. This precludes a list of nursing tasks that can be routinely and uniformly delegated for all patients/clients in all situations. The decision to delegate must be based on careful analysis of the patient's/client's needs and circumstances.
 - (2) The licensed nurse who is delegating a nursing task shall:
 - (a) verify and evaluate the orders;
 - (b) perform a nursing assessment;
 - (c) determine whether the task can be safely performed by an unlicensed assistive personnel or whether it requires a licensed health care provider;
 - (d) verify that the delegatee has the competence to perform the delegated task prior to performing it;
 - (e) provide instruction and direction necessary to safely perform the specific task; and
 - (f) provide ongoing supervision and evaluation of the delegatee who is performing the task.
 - (3) The delegator shall evaluate the situation to determine the degree of supervision required to ensure safe care.
 - (a) The following factors shall be evaluated to determine the level of supervision needed:
 - (i) the stability of the condition of the patient/client;
 - (ii) the training and capability of the delegatee;
 - (iii) the nature of the task being delegated; and
 - (iv) the proximity and availability of the delegator to the delegatee when the task will be performed.
 - (b) The delegating nurse or another qualified nurse shall be readily available either in person or by telecommunication. The delegator responsible for the care of the patient/client shall make supervisory visits at appropriate intervals to:
 - (i) evaluate the patient's/client's health status;
 - (ii) evaluate the performance of the delegated task;
 - (iii) determine whether goals are being met; and
 - (iv) determine the appropriateness of continuing delegation of the task.
 - (4) Nursing tasks, to be delegated, shall meet the following criteria as applied to each specific patient/client situation:
 - (a) be considered routine care for the specific patient/client;
 - (b) pose little potential hazard for the patient/client;
 - (c) be performed with a predictable outcome for the patient/client;

(d) be administered according to a previously developed plan of care; and

(e) not inherently involve nursing judgment which cannot be separated from the procedure.

(5) If the nurse, upon review of the patient's/client's condition, complexity of the task, ability of the unlicensed assistive personnel and other criteria as deemed appropriate by the nurse, determines that the unlicensed assistive personnel cannot safely provide care, the nurse shall not delegate the task.

R156-31b-703. Generally Recognized Scope of Practice of a LPN.

In accordance with Subsection 58-31b-102([47]13), the LPN practicing within the generally recognized LPN scope of practice practices as follows:

(1) In demonstrating professional accountability shall:

(a) practice within the legal boundaries for practical nursing through the scope of practice authorized in statute and rule;

(b) demonstrate honesty and integrity in nursing practice;

(c) base nursing decisions on nursing knowledge and skills, the needs of patients/clients;

(d) accept responsibility for individual nursing actions, competence, decisions and behavior in the course of practical nursing practice; and

(e) maintain continued competence through ongoing learning and application of knowledge in the client's interest.

(2) In demonstrating the responsibility for nursing practice implementation shall:

(a) conduct a focused nursing assessment;

(b) plan for episodic nursing care;

(c) demonstrate attentiveness and provides patient/client surveillance and monitoring;

(d) assist in identification of client needs;

(e) seek clarification of orders when needed;

(f) demonstrate attentiveness and provides observation for signs, symptoms and changes in client condition;

(g) assist in the evaluation of the impact of nursing care, and contributes to the evaluation of patient/client care;

(h) recognize client characteristics that may affect the patient's/client's health status;

(i) obtain orientation/training competency when encountering new equipment and technology or unfamiliar care situations;

(j) implement appropriate aspects of client care in a timely manner;

(i) provide assigned and delegated aspects of patient's/client's health care plan;

(ii) implement treatments and procedures; and

(iii) administer medications accurately;

(k) document care provided;

(l) communicate relevant and timely client information with other health team members including:

(i) patient/client status and progress;

(ii) patient/client response or lack of response to therapies;

(iii) significant changes in patient/client condition; or

(iv) patient/client needs;

(m) participate in nursing management;

(i) assign nursing activities to other LPNs;

(ii) delegate nursing activities for stable patients/clients to unlicensed assistive personnel;

(iii) observe nursing measures and provide feedback to nursing manager; and

(iv) observe and communicate outcomes of delegated and assigned activities;

(n) take preventive measures to protect patient/client, others and self;

(o) respect patient's/client's rights, concerns, decisions and dignity;

(p) promote a safe client environment;

(q) maintain appropriate professional boundaries; and

(r) assume responsibility for own decisions and actions.

(3) In being a responsible member of an interdisciplinary health care team shall:

(a) function as a member of the health care team, contributing to the implementation of an integrated health care plan;

(b) respect client property and the property of others; and

(c) protect confidential information unless obligated by law to disclose the information.

R156-31b-704. Generally Recognized Scope of Practice of a RN.

In accordance with Subsection 58-31b-102([48]14), the RN practicing within the generally recognized RN scope of practice practices as follows:

(1) In demonstrating professional accountability shall:

(a) practice within the legal boundaries for nursing through the scope of practice authorized in statute and rules;

(b) demonstrate honesty and integrity in nursing practice;

(c) base professional decisions on nursing knowledge and skills, the needs of patients/clients;

(d) accept responsibility for judgments, individual nursing actions, competence, decisions and behavior in the course of nursing practice; and

(e) maintain continued competence through ongoing learning and application of knowledge in the patient's/client's interest.

(2) In demonstrating the responsibility for nursing practice implementation shall:

(a) conduct a comprehensive nursing assessment;

(b) detect faulty or missing patient/client information;

(c) apply nursing knowledge effectively in the synthesis of the biological, psychological, spiritual and social aspects of the patient's/client's condition;

(d) utilize this broad and complete analysis to plan strategies of nursing care and nursing interventions that are integrated within the patient's/client's overall health care plan;

(e) provide appropriate decision making, critical thinking and clinical judgment to make independent nursing decisions and identification of health care needs;

(f) seek clarification of orders when needed;

(g) implement treatments and therapy, including medication administration, delegated medical and independent nursing functions;

(h) obtain orientation/training for competence when encountering new equipment and technology or unfamiliar situations;

(i) demonstrate attentiveness and provides client surveillance and monitoring;

(j) identify changes in patient's/client's health status and comprehends clinical implications of patient/client signs, symptoms and changes as part of expected and unexpected patient/client course or emergent situations;

- (k) evaluate the impact of nursing care, the patient's/client's response to therapy, the need for alternative interventions, and the need to communicate and consult with other health team members;
 - (l) document nursing care;
 - (m) intervene on behalf of patient/client when problems are identified and revises care plan as needed;
 - (n) recognize patient/client characteristics that may affect the patient's/client's health status; and
 - (o) take preventive measures to protect patient/client, others and self.
- (3) In demonstrating the responsibility to act as an advocate for patient/client shall:
 - (a) respect the patient's/client's rights, concerns, decisions and dignity;
 - (b) identify patient/client needs;
 - (c) attend to patient/client concerns or requests;
 - (d) promote safe patient/client environment;
 - (e) communicate patient/client choices, concerns and special needs with other health team members regarding:
 - (i) patient/client status and progress;
 - (ii) patient/client response or lack of response to therapies; and
 - (iii) significant changes in patient/client condition;
 - (f) maintain appropriate professional boundaries;
 - (g) maintain patient/client confidentiality; and
 - (h) assume responsibility for own decisions and actions.
- (4) In demonstrating the responsibility to organize, manage and supervise the practice of nursing shall:
 - (a) assign to another only those nursing measures that fall within that nurse's scope of practice, education, experience and competence or unlicensed person's role description;
 - (b) delegate to another only those nursing measures which that person has the necessary skills and competence to accomplish safely;
 - (c) match patient/client needs with personnel qualifications, available resources and appropriate supervision;
 - (d) communicate directions and expectations for completion of the delegated activity;
 - (e) supervise others to whom nursing activities are delegated or assigned by monitoring performance, progress and outcome, and assures documentation of the activity;
 - (f) provide follow-up on problems and intervenes when needed;
 - (g) evaluate the effectiveness of the delegation or assignment;
 - (h) intervene when problems are identified and revises plan of care as needed;
 - (i) retain professional accountability for nursing care as provided;
 - (j) promote a safe and therapeutic environment by:
 - (i) providing appropriate monitoring and surveillance of the care environment;
 - (ii) identifying unsafe care situations; and
 - (iii) correcting problems or referring problems to appropriate management level when needed; and
 - (k) teach and counsel patient/client families regarding health care regimen, which may include general information about health and medical condition, specific procedures and wellness and prevention.
- (5) In being a responsible member of an interdisciplinary health care team shall:

- (a) function as a member of the health care team, collaborating and cooperating in the implementation of an integrated patient/client-centered health care plan;
- (b) respect patient/client property, and the property of others; and
- (c) protect confidential information.
- (6) In being the chief administrative nurse shall:
 - (a) assure that organizational policies, procedures and standards of nursing practice are developed, kept current and implemented to promote safe and effective nursing care;
 - (b) assure that the knowledge, skills and abilities of nursing staff are assessed and that nurses and nursing assistive personnel are assigned to nursing positions appropriate to their determined competence and licensure/certification/registration level;
 - (c) assure that competent organizational management and management of human resources within the nursing organization are established and implemented to promote safe and effective nursing care; and
 - (d) assure that thorough and accurate documentation of personnel records, staff development, quality assurance and other aspects of the nursing organization are maintained.
- (7) When functioning in a nursing program educator (faculty) role shall:
 - (a) teach current theory, principles of nursing practice and nursing management;
 - (b) provide content and clinical experiences for students consistent with statutes and rules;
 - (c) supervise students in the provision of nursing services; and
 - (d) evaluate student scholastic and clinical performance with expected program outcomes.

KEY: licensing, nurses~~February 17, 2005~~**Notice of Continuation June 2, 2003****58-31b-101****58-1-106(1)(a)****58-1-202(1)(a)**

**Commerce, Occupational and
 Professional Licensing
 R156-38
 (Changed to R156-38a)
 Residence Lien Restriction and Lien
 Recovery Fund Rules**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27987

FILED: 06/06/2005, 10:53

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As a result of H.B. 105 passed during the 2005 Legislative Session, amendments are being proposed to this rule. (DAR NOTE: H.B. 105 is found at UT L 2005 Ch 64, and was effective 05/02/2005.)

SUMMARY OF THE RULE OR CHANGE: The entire rule is being renumbered from Rule R156-38 to Rule R156-38a since the Division has enacted another rule with the number of Rule R156-38b that is unrelated to the Residence Lien Recovery Fund. Various statute citations have been updated in the rule as a result of changes made to Title 38, Chapter 11. Throughout the rule, where applicable, the word "claimant" has been changed to "applicant". Other amendments include lien claimant mailing requirement added, additional language required to appear in contractor invoices, Notices of Commencement of Action information deleted, changes to requirements pertaining to an affidavit from a contracting entity showing that the homeowner paid the contracting entity in full, and changes to language describing documents needed to establish compliance with residence occupancy requirement.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 38-11-101, and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The state budget will see no costs or savings since the Residence Lien Recovery Fund is self-funded. The Residence Lien Recovery Fund will incur minimal costs, approximately \$75, to reprint the rule once the proposed amendments are made effective.

❖ **LOCAL GOVERNMENTS:** These proposed amendments do not apply to local governments. The amendments only apply to persons and businesses who utilize the Residence Lien Recovery Fund.

❖ **OTHER PERSONS:** The Division and Residence Lien Recovery Fund expect no costs or savings beyond the expected fiscal impact of applicable legislation, which was deemed to be negligible to parties affected by this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division and Residence Lien Recovery Fund expect no costs or savings beyond the expected fiscal impact of applicable legislation, which was deemed to be negligible to parties affected by this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In compliance with H.B. 105 (2005), which eliminated the notice of commence of action requirement, this rule filing eliminates division rules regarding such notices. This rule filing also contains some procedural provisions and technical changes, such as grammar and spelling corrections and references to other statutes and rules. No fiscal impact to businesses is anticipated from these amendments. 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:

Rich Oborn or Earl Webster at the above address, by phone at 801-530-6104 or 801-530-7632, by FAX at 801-530-6511 or 801-530-6511, or by Internet E-mail at roborn@utah.gov or ewebster@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/01/2005

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 7/13/2005 at 8:15 AM, Heber Wells Bldg, 160 E 300 S, North Conference Room (First Floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 08/02/2005

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing. R156-38a. Residence Lien Restriction and Lien Recovery Fund Rules.

R156-38a-101. Title.

These rules are known as the "Residence Lien Restriction and Lien Recovery Fund Act Rules."

R156-38a-102. Definitions.

In addition to the definitions in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; Title 58, Chapter 1, Division of Occupational and Professional Licensing Act; and Rule R156-1, General Rules of the Division of Occupational and Professional Licensing, which shall apply to these rules, as used in these rules:

(1) "Applicant" means either a claimant, as defined in Subsection (2), or a homeowner, as defined in Subsection (5), who submits an application for a certificate of compliance.

(2) "Claimant" means a person who submits an application or claim for payment from the fund.

(3) "Construction project", as used in Subsection 38-11-203(4), means all qualified services related to the written contract required by Subsection 38-11-204(~~[3]4~~)(a).

(4) "Contracting entity" means an original contractor, a factory built housing retailer, or a real estate developer that contracts with a homeowner.

(5) "Homeowner" means the owner of an owner-occupied residence.

(6) "Licensed or exempt from licensure", as used in Subsection 38-11-204(~~[3]4~~) means that, on the date the written contract was entered into, the contractor held a valid, active license issued by the Division pursuant to Title 58, Chapter 55 of the Utah Code in any classification or met any of the exemptions to licensure given in Title 58, Chapters 1 and 55.

(7) "Necessary party" includes the division, on behalf of the fund, and the ~~[claimant]~~applicant.

(8) "Owner", as defined in Subsection 38-11-102(~~[46]17~~), does not include any person or developer who builds residences that are offered for sale to the public.

(9) "Permissive party" includes:

(a) with respect to claims for payment: the nonpaying party, the homeowner, and any entity who ~~will~~ may be required to reimburse the fund if a claimant's claim is paid from the fund;

(b) with respect to an application for a certificate of compliance: the original contractor and any entity who has demanded from the homeowner payment for qualified services.

(10) "Qualified services", as used in Subsection 38-11-102(~~19~~20) do not include:

(a) services provided by the claimant to cure a breach of the contract between the claimant and the nonpaying party; or

(b) services provided by the claimant under a warranty or similar arrangement.

R156-38a-103a. Authority - Purpose - Organization.

(1) These rules are adopted by the division under the authority of Section 38-11-103 to enable the division to administer Title 38, Chapter 11, the Residence Lien Restriction and Lien Recovery Fund Act.

(2) The organization of these rules is patterned after the organization of Title 38, Chapter 11.

R156-38a-103b. Duties, Functions, and Responsibilities of the Division.

The duties, functions and responsibilities of the division with respect to the administration of Title 38, Chapter 11, shall, to the extent applicable and not in conflict with the Act or these rules, be in accordance with Section 58-1-106.

R156-38a-104. Board.

Board meetings shall comply with the requirements set forth in Section R156-1-204.

R156-38a-105a. Adjudicative Proceedings.

(1) Except as provided in Subsection 38-1-11(4)(d), the classification of adjudicative proceedings initiated under Title 38, Chapter 11 is set forth at Sections R156-46b-201 and R156-46b-202.

(2) The identity and role of presiding officers for adjudicative proceedings initiated under Title 38, Chapter 11, is set forth in Sections 58-1-109 and R156-1-109.

(3) Issuance of investigative subpoenas under Title 38, Chapter 11 shall be in accordance with Subsection R156-1-110.

(4) Adjudicative proceedings initiated under Title 38, Chapter 11, shall be conducted in accordance with Title 63, Chapter 46b, Utah Administrative Procedures Act, and Rules R151-46b and R156-46b, Utah Administrative Procedures Act Rules for the Department of Commerce and the Division of Occupational and Professional Licensing, respectively, except as otherwise provided by Title 38, Chapter 11 or these rules.

(5) Claims for payment and applications for a certificate of compliance shall be filed with the division and served upon all necessary and permissive parties.

(6) Service of claims, applications for a certificate of compliance, or other pleadings by mail to a qualified beneficiary of the fund addressed to the address shown on the division's records with a certificate of service as required by R151-46b-8, shall constitute proper service. It shall be the responsibility of each applicant or registrant to maintain a current address with the division.

(7) A permissive party is required to file a response to a claim or application for certificate of compliance within 30 days of

notification by the division of the filing of the claim or application for certificate of compliance, to perfect the party's right to participate in the adjudicative proceeding to adjudicate the claim or application.

(8)(a) For claims wherein the claimant has had judgment entered against the nonpaying party, findings of fact and conclusions of law entered by a civil court or state agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication in an adjudicative proceeding to adjudicate the claim.

(b) For claims wherein the nonpaying party's bankruptcy filing precluded the claimant from having judgment entered against the nonpaying party, a claim or issue resolved by a prior judgment, order, findings of fact, or conclusions of law entered in by a civil court or a state agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication with respect to the parties to the judgment, order, findings of fact, or conclusions of law.

(9) A party to the adjudication of a claim against the fund may be granted a stay of the adjudicative proceeding during the pendency of a judicial appeal of a judgment entered by a civil court or the administrative or judicial appeal of an order entered by an administrative agency provided:

(a) the administrative or judicial appeal is directly related to the adjudication of the claim; and

(b) the request for the stay of proceedings is filed with the presiding officer conducting the adjudicative proceeding and concurrently served upon all parties to the adjudicative proceeding, no later than the deadline for filing the appeal.

(10) Notice pursuant to Subsection 38-1-11(4)(f) shall be accomplished by sending a copy of the division's order by first class, postage paid United States Postal Service mail to each lien claimant listed on the application for certificate of compliance. The address for the lien claimant shall be:

(a) if the lien claimant is a licensee of the division or a registrant of the fund, the notice shall be mailed to the current mailing address shown on the division's records; or

(b) if the lien claimant is not a licensee of the division or a registrant of the fund, the notice shall be mailed to the registered agent address shown on the records of the Division of Corporations and Commercial Code.

R156-38a-105b. Notices of Denial - Notices of Incomplete Application - Conditional Denial of Claims - Extensions of Time to Correct Claims - Prolonged Status.

(1)(a) A written notice of denial of claim shall be provided to an applicant who submits a complete application if the division determines that the application does not meet the requirements of Section 38-11-204.

(b) A written notice of incomplete application shall be provided to an applicant who submits an incomplete application. The notice shall advise the applicant that the application is incomplete and that the application is denied, unless the applicant corrects the deficiencies within the time period specified in the notice and the application otherwise meets all qualifications for approval.

(2) An applicant may receive a single 30 day extension of the time period in Subsection (1)(b). Additional extensions of the time period shall only be granted if the applicant makes the request in writing and demonstrates, with adequate documentation, that the applicant:

(a) has made all reasonable efforts to complete the application;

(b) has been prevented from completing the application because of unusual and extraordinary circumstances entirely beyond its control; and

(c) can be reasonably expected to complete the application if an additional extension is granted.

(3)(a) ~~[A claimant]~~An applicant may for any reason be granted a single request that its ~~[claim]~~application be prolonged.

(b) ~~[A claim]~~An application granted prolonged status shall be inactive for a period of one year or until reactivated by the ~~[claimant]~~applicant, whichever comes first.

(c) At the end of the one year period, the ~~[claimant]~~applicant shall be required to either complete the ~~[claim]~~application or demonstrate reasonable cause for prolonged status to be renewed for another one year period. The following shall constitute valid causes for renewing prolonged status:

(i) continuing litigation ~~[pursuant to Subsection R156-38-105a(9)]~~the outcome of which will affect whether the applicant can demonstrate compliance with Section 38-11-204;

(ii) ongoing bankruptcy proceedings involving the nonpaying party or contracting entity that would prevent the ~~[claimant]~~applicant from complying with Section 38-11-204;

(iii) continuing compliance by the nonpaying party with a payment agreement between the claimant and the nonpaying party; or

(iv) other reasonable cause as determined by the presiding officer.

(d) Upon expiration of the one year prolonged status of ~~[a claim]~~an application, the ~~[Division]~~division shall issue to the ~~[claimant]~~applicant an updated notice of incomplete application pursuant to Subsection (1)(b). Included with that notice shall be a form that provides the ~~[claimant]~~applicant an opportunity to:

(i) reactivate the ~~[claim]~~application by submitting documentation necessary to complete the ~~[claim]~~application;

(ii) withdraw the ~~[claim]~~application; or

(iii) request prolonged status be renewed pursuant to Subsection (3)(c).

(e) Any request for renewal of prolonged status made under Subsection (3)(c)(iv) shall include evidence sufficient to demonstrate the validity of the reasons given as justification for renewal.

(f) If ~~[a claimant's]~~an applicant's request for renewal of prolonged status is denied, the ~~[claimant]~~applicant may request agency review.

(g) ~~[A claim]~~An application which has been reactivated from prolonged status may not be again prolonged unless the ~~[claimant]~~applicant can establish compliance with the requirements of Subsection (3)(c).

R156-38a-108. Notification of Rights under Title 38, Chapter 11.

~~[(4)]~~—A notice in substantially the following form shall prominently appear in an easy-to-read type style and size in every contract between an original contractor and homeowner and in every notice of intent to hold and claim lien filed under Section 38-1-7 against a homeowner or against an owner-occupied residence:

"X. PROTECTION AGAINST LIENS AND CIVIL ACTION.
Notice is hereby provided in accordance with Section 38-11-108 of the Utah Code that under Utah law an "owner" may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by

suppliers and subcontractors as a part of this contract, if and only if the following conditions are satisfied:

(1) the owner entered into a written contract with an original contractor, a factory built housing retailer, or a real estate developer;

(2) the original contractor was properly licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act at the time the contract was executed; and

(3) the owner paid in full the original contractor, factory built housing retailer, or real estate developer or their successors or assigns in accordance with the written contract and any written or oral amendments to the contract."

(4) An owner who has satisfied all of these conditions may perfect his protection from liens by applying for a Certificate of Compliance with the Division of Occupational and Professional Licensing by calling (801) 530-6628 or toll free in Utah only (866) 275-3675 and requesting to speak to the Lien Recovery Fund.

R156-38a-109. Format for Form Affidavit and Motion.

The form affidavit required under Subsection 38-1-11(4) shall be the Homeowner's Application for Certificate of Compliance prepared by the Division.

R156-38a-202a. Initial Assessment Procedures.

~~[(4)]~~—The initial assessment shall be a flat or identical assessment levied against all qualified beneficiaries to create the fund.

~~—(2) The amount of the initial assessment shall be established by the division and board in accordance with the procedures for a "new program" under Subsection 63-38-3.2(5).]~~

R156-38a-202b. Special Assessment Procedures.

(1) Special assessments shall take into consideration the claims history against the fund.

(2) The amount of special assessments shall be established by the division and board in accordance with the procedures set forth in ~~[Subsection]~~Section 38-11-206~~[(4)]~~.

R156-38a-203. Limitation on Payment of Claims.

(1) Claims may be paid prior to the pro-rata adjustment required by Subsection 38-11-203(4)(b) if ~~based upon an evaluation of the notices of commencement of action filed with respect to an owner-occupied residence or the total claim filings on an owner-occupied residence,~~ the division determines that a pro-rata payment will likely not be required.

(2) If any claims have been paid before the division determines a pro-rata payment will likely be required, the division will notify the claimants of the likely adjustment and that the claimants will be required to reimburse the division when the final pro-rata amounts are determined.

(3) The pro-rata payment amount required by Subsection 38-11-203(4)(b) shall be calculated as follows:

(a) ~~[(D)]~~determine the total claim amount each claimant would be entitled to without consideration of the limit set in Subsection 38-11-203(4)(b)~~[-];~~

(b) ~~[(S)]~~sum the amounts each claimant would be entitled to without consideration of the limit to determine the total amount payable to all claimants without consideration of the limit~~[-];~~

(c) ~~[(D)]~~divide the limit amount by the total amount payable to all claimants without consideration of the limit to find the claim allocation ratio~~[-];~~ and

(d) [F]for each claim, multiply the total claim amount without consideration of the limit by the claim allocation ratio to find the net [~~claim~~] payment for each claim.

R156-38a-204a. Applications for Certificate of Compliance by Homeowners - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each homeowner application for a certificate of compliance:

(1) a copy of the written contract between the homeowner[s] and the contracting entity;

(2)(a) if the homeowner contracted with an original contractor, documentation issued by the division that the original contractor was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, on the date the contract was entered into;

(b) if the homeowner contracted with a real estate developer:

(i) credible evidence that the real estate developer had an ownership interest in the property;

(ii) a copy of the contract between the real estate developer and the licensed contractor with whom the real estate developer contracted for construction of the residence or other credible evidence showing the existence of such a contract and setting forth a description of the services provided to the real estate developer by the contractor;

(iii) credible evidence that the real estate developer offered the residence for sale to the public; and

(iv) documentation issued by the division that the contractor with whom the real estate developer contracted for construction of the residence was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, on the date the contract was entered into;

(c) if the homeowner contracted with a manufactured housing retailer, a copy of the completed retail purchase contract;

(3) one of the following:

(a) except as provided in Subsection (5), an affidavit from the contracting entity acknowledging that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; or

(b) other credible evidence establishing that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; and

(4) an affidavit from the homeowner establishing that he is an owner as defined in Subsection 38-11-102([~~16~~]17) and that the residence is an owner-occupied residence as defined in Subsection 38-11-102([~~17~~]18).

(5) If any of the following apply, the affidavit described in Subsection (3)(a) shall not be accepted as evidence of payment in full unless that affidavit is accompanied by independent, credible evidence substantiating the statements made in the affidavit:

(a) the affiant is the homeowner;

(b) the homeowner is an owner, member, partner, shareholder, employee, or qualifier of the contracting entity;

(c) the homeowner has a familial relationship with an owner, member, partner, shareholder, employee, or qualifier of the contracting entity;

(d) the homeowner has a familial relationship with the affiant;

(e) an owner, member, partner, shareholder, employee, or qualifier of the contracting entity is also an owner, member, partner, shareholder, employee, or qualifier of the homeowner;

(f) the contracting entity is an owner, member, partner, shareholder, employee, or qualifier of the homeowner; or

(g) the affiant stands to benefit in any way from approval of the claim or application for certificate of compliance.

R156-38a-204b. Claims Against the Fund by Nonlaborers - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

(1) one of the following:

(a) a copy of the certificate of compliance issued by the [~~D~~]division for the residence at issue in the claim;

(b) the documents required in Section R156-38a-204a; or

(c) a copy of a civil judgment containing findings of fact that:

(i) the homeowner entered a written contract in compliance with Subsection 38-11-204([~~3~~]4)(a);

(ii) the contracting entity was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

(iii) the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; and

(iv) the homeowner is an owner as defined in Subsection 38-11-102([~~16~~]17) and the residence is an owner-occupied residence as defined in Subsection 38-11-102([~~17~~]18);

(2)(a) a copy of the applicant's notice to hold and claim lien recorded against the incident residence pursuant to Section 38-1-7; or

(b) if the applicant did not record notice to hold and claim lien, one of the following as applicable:

(i) a copy of the certificate of occupancy issued by the local government entity having jurisdiction over the incident residence;

(ii) if no occupancy permit was required by the local government entity but a final inspection was required, a copy of the final inspection approval issued by the local government entity; or

(iii) if neither Subsection(2)(b)(i) nor (2)(b)(ii) applies, an affidavit from the homeowner or other credible evidence establishing the date on which the original contractor substantially completed the written contract;

([~~2~~]3) one of the following as applicable:

(a) a copy of an action date stamped by a court of competent jurisdiction filed by the claimant against the nonpaying party to recover monies owed for qualified services performed on the owner-occupied residence[~~, filed within 180 days from the date the claimant last provided qualified services]; or~~

(b) documentation that a bankruptcy filing by the nonpaying party prevented the claimant from satisfying Subsection (a);

([~~3~~]4) one of the following:

(a) a copy of a civil judgment entered in favor of the claimant against the nonpaying party containing a finding that the nonpaying party failed to pay the claimant pursuant to their contract; or

(b) documentation that a bankruptcy filing by the nonpaying party prevented the claimant from obtaining a civil judgment, including a copy of the proof of claim filed by the claimant with the bankruptcy court, together with credible evidence establishing that the nonpaying party failed to pay the claimant pursuant to their contract;

([~~4~~]5) one or more of the following as applicable:

(a) a copy of a supplemental order issued following the civil judgment entered in favor of the claimant and a copy of the return of

service of the supplemental order indicating either that service was accomplished on the nonpaying party or that said nonpaying party could not be located or served;

(b) a writ of execution issued if any assets are identified through the supplemental order or other process, which have sufficient value to reasonably justify the expenditure of costs and legal fees which would be incurred in preparing, issuing, and serving execution papers and in holding an execution sale; or

(c) documentation that a bankruptcy filing or other action by the nonpaying party prevented the claimant from satisfying Subparagraphs (a) and (b);

(~~5~~)6) certification that the claimant is not entitled to reimbursement from any other person at the time the claim is filed and that the claimant will immediately notify the presiding officer if the claimant becomes entitled to reimbursement from any other person after the date the claim is filed; and

(~~6~~)7) one or more of the following:

(a) a copy of invoices setting forth a description of, the location of, the performance dates of, and the value of the qualified services claimed;

(b) a copy of a civil judgment containing a finding setting forth a description of, the location of, the performance dates of, and the value of the qualified services claimed; or

(c) credible evidence setting forth a description of, the location of, the performance dates of, and the value of the qualified services claimed.

(~~7~~)8) If the claimant is requesting payment of costs and attorney fees ~~not~~ other than those specifically enumerated in the judgment against the nonpaying party, the claim shall include documentation of those costs and fees adequate for the ~~D~~ division to apply the requirements set forth in Section R156-38a-204d.

(~~8~~)9) In claims in which the presiding officer determines that the claimant has made a reasonable but unsuccessful effort to produce all documentation specified under this rule to satisfy any requirement to recover from the fund, the presiding officer may elect to accept the evidence submitted by the claimant if the requirements to recover from the fund can be established by that evidence.

(~~9~~)10) A separate claim must be filed for each residence and a separate filing fee must be paid for each claim.

R156-38a-204c. Claims Against the Fund by Laborers - Supporting Documents.

(1) The following supporting documents shall, at a minimum, accompany each laborer claim for recovery from the fund:

(a) one of the following:

(i) a copy of a wage claim assignment filed with the Employment Standards Bureau of the Antidiscrimination and Labor Division of the Labor Commission of Utah for the amount of the claim, together with all supporting documents submitted in conjunction therewith; or

(ii) a copy of an action filed by claimant against claimant's employer to recover wages owed;

(b) one of the following:

(i) a copy of a final administrative order for payment issued by the Employment Standards Bureau of the Antidiscrimination and Labor Division of the Labor Commission of Utah containing a finding that the claimant is an employee and that the claimant has not been paid wages due for work performed at the site of construction on an owner-occupied residence;

(ii) a copy of a civil judgment entered in favor of claimant against the employer containing a finding that the employer failed to

pay the claimant wages due for work performed at the site of construction on an owner-occupied residence; or

(iii) a copy of a bankruptcy filing by the employer which prevented the entry of an order or a judgment against the employer;

(c) one of the following:

(i) a copy of the certificate of compliance issued by the ~~D~~ division for the residence at issue in the claim;

(ii) an affidavit from the homeowner establishing that he is an owner as defined in Subsection 38-11-102(~~16~~)17) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(~~17~~)18);

(iii) a copy of a civil judgment containing a finding that the homeowner is an owner as defined by Subsection 38-11-102(~~16~~)17) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(~~17~~)18); or

(iv) other credible evidence establishing that the owner is an owner as defined by Subsection 38-11-102(~~16~~)17) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(~~17~~)18).

(2) When a laborer makes claim on multiple residences as a result of a single incident of ~~non-payment~~ nonpayment by the same employer, the division must require payment of at least one application fee required under Section 38-11-204(1)(b) and at least one registration fee required under Subsection 38-11-204(7), but may waive additional application and registration fees for claims for the additional residences, where no legitimate purpose would be served by requiring separate filings.

R156-38a-204d. Calculation of Costs, Attorney Fees and Interest for Payable Claims.

(1) Payment for qualified services, costs, attorney fees, and interest shall be made as specified in Section 38-11-203.

(2) When a claimant provides qualified service on multiple properties, irrespective of whether those properties are owner-occupied residences, and files claim for payment on some or all of those properties and the claims are supported by a single judgment or other common documentation and the judgment or documentation does not differentiate costs and attorney fees by property, the amount of costs and attorney fees shall be allocated among the related properties using the following formula: (Qualified services attributable to the owner-occupied residence at issue in the claim divided by Total qualified services awarded as judgment principal or total documented qualified services) x Total costs or total attorney fees.

(3)(a) For claims wherein the claimant has had judgment entered against the nonpaying party, post-judgment costs shall be limited to those costs allowable by a district court, such as costs of service, garnishments, or executions, and shall not include postage, copy expenses, telephone expenses, or other costs related to the preparation and filing of the claim application.

(b) For claims wherein the nonpaying party's bankruptcy filing precluded the claimant from having judgment entered against the nonpaying party, total costs shall be limited to those costs that would have been allowable by the district court had judgment been entered, such as, but not limited to, costs of services, garnishments, or executions, and shall not include postage, copy expenses, telephone expenses, or other costs related to the preparation and filing of the claim application.

(4) The interest rate or rates applicable to a claim shall be the rate for the year or years in which payment for the qualified services was due.

~~(5) If the evidence submitted in fulfillment of Subsection R156-38a-204b(7) does not specify the date or dates upon which payment was due, the division shall assume payment was due 30 calendar days after the date on which the claimant billed the nonpaying party for the qualified services.~~

~~(6) If the qualified services at issue in a claim were billed in two or more installments and payment was due on two or more dates, the claimant shall provide documentation sufficient for the division to determine each payment due date and the attendant portion of qualified services for which payment was due on that date. If the claimant does not provide sufficient documentation, the division shall assume the nonpaying party's debt accrued evenly throughout the period so an equal portion of the qualified services balance shall be applied to each billing installment.~~

~~(7) If a claimant receives partial payment for qualified services between the time judgment is entered and the claim is filed, the division shall calculate payment amounts by accruing costs, attorney fees and interest to the date of the payment then reducing the individual balances of first interest, then costs, then attorney fees, and finally qualified services to a zero balance until the entire payment is applied. The division shall then make payment of the remaining balances plus additional accrued interest on the remaining qualified services balance.~~

~~R156-38a-204c. [Format for Notice of Commencement of Action]-Application of Requirement that Nonpaying Party be Licensed.~~

~~[The Notice of Commencement required under Subsection R156-38-204a(5)(b) shall be in substantially the following format:~~

TABLE I

~~BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING OF THE DEPARTMENT OF COMMERCE OF THE STATE OF UTAH~~

~~_____ John Doe, : Notice of Commencement
 _____ Plaintiff : of Action
 _____ vs _____ : NCA No.

 _____ Richard Roe, :
 _____ Defendant :~~

~~_____ Notice is hereby provided of the filing of Case No. (number)
 _____ on (date) before (Court).~~

~~_____ Brief explanation of nature of case:~~

~~_____ Address of defendant:~~

~~_____ Name and address of potential fund claimant:~~

~~_____ Name and address of original contractor, subcontractor,
 _____ real estate developer, and/or factory built housing retailer
 _____ described in Subsection 38-11-204(3)(c):~~

~~_____ For each owner occupied residence included in the civil
 _____ action:~~

~~_____ Name and address of the owner of the owner occupied residence;~~

~~_____ Street address of the owner occupied residence;~~

~~_____ Amount of damages sought against the owner occupied residence;~~

~~_____ Last date qualified services were provided for the owner-
 _____ occupied residence by the potential fund claimant:~~

~~_____ Signature of Claimant or claimant's representative~~

~~_____ Date of signature~~

~~_____]
 _____ The provisions of Subsection 38-11-204(4)(f) shall apply only
 _____ to qualified services provided by the claimant on or after May 3,
 _____ 2004.~~

R156-38a-301a. Contractor Registration as a Qualified Beneficiary - All License Classifications Required to Register Unless Specifically Exempted - Exempted Classifications.

(1) All license classifications of contractors are determined to be regularly engaged in providing qualified services for purposes of automatic registration as a qualified beneficiary, as set forth in Subsections 38-11-301(1) and (2), with the exception of the following license classifications:

TABLE II		
Primary Classification Number	Subclassification Number	Classification
E100	S211	General Engineering Contractor
	S213	Boiler Installation Contractor
	S262	Industrial Piping Contractor
S320		Granite and Pressure Grouting Contractor
	S321	Steel Erection Contractor
	S322	Steel Reinforcing Contractor
	S323	Metal Building Erection Contractor
S340		Structural Stud Erection Contractor
		Sheet Metal Contractor
S360		Refrigeration Contractor
		Sign Installation Contractor
S440	S441	Non Electrical Outdoor Advertising Sign Contractor
		Mechanical Insulation Contractor
S450		Petroleum System Contractor
		Piers and Foundations Contractor
S470		General Engineering Trades Instructor
		General Building Trades Instructor
S480		General Electrical Trades Instructor
		General Plumbing Trades Instructor
I101		General Mechanical Trades Instructor
I102		
I103		
I104		
I105		

(2) Any person holding a license requiring registration in the fund that is on inactive status on the assessment date of any special assessment of the fund, may defer payment of that special assessment and any assessment made during the time the license remains on inactive status and the licensee does not engage in the licensed occupation or profession.

(3) Before a licensee can be reinstated to an active status, the licensee must pay:

- (a) the initial assessment of \$195 assessed July 1, 1995, if that assessment has never been paid by that licensee; and
- (b) all unpaid special assessments.

R156-38a-301b. Event Necessitating Registration - Name Change by Qualified Beneficiary - Reorganization of Registrant's Business Type - Transferability of Registration.

(1) Any change in entity status by a registrant requires registration with the Fund by the new or surviving entity before that entity is a qualified beneficiary.

(2) The following constitute a change of entity status for purposes of Subsection (1):

(a) creation of a new legal entity as a successor or related-party entity of the registrant;

(b) change from one form of legal entity to another by the registrant; or

(c) merger or other similar transaction wherein the existing registrant is acquired by or assumed into another entity and no longer conducts business as its own legal entity.

(3) A qualified beneficiary registrant shall notify the division in writing of a name change within 30 days of the change becoming effective. The notice shall provide the following:

(a) the registrant's prior name;

(b) the registrant's new name;

(c) the registrant's registration number; and

(d) proof of registration with the Division of Corporations and Commercial Code as required by state law.

(4) A registration shall not be transferred, lent, borrowed, sold, exchanged for consideration, assigned, or made available for use by any entity other than the registrant for any reason.

(5) A claimant shall not be considered a qualified beneficiary registrant merely by virtue of owning or being owned by an entity that is a qualified beneficiary.

R156-38a-302. Renewal and Reinstatement Procedures.

(1) Renewal notices required in connection with a special assessment shall be mailed to each registrant at least 30 days prior to the expiration date for the existing registration established in the renewal notice. Unless the registrant pays the special assessment by the expiration date shown on the renewal notice, the registrant's registration in the fund automatically expires on the expiration date.

(2) Renewal notices shall be sent by letter deposited in the post office with postage prepaid, addressed to the last address shown on the division's records. Such mailing shall constitute legal notice. It shall be the duty and responsibility of each registrant to maintain a current address with the division.

(3) Renewal notices shall specify the amount of the special assessment, the application requirement, and other renewal requirements, if any; shall require that each registrant document or certify that the registrant meets the renewal requirements; and shall advise the registrant of the consequences of failing to renew a registration.

(4) Renewal applications must be received by the division in its ordinary course of business on or before the renewal application due date in order to be processed as a renewal application. Late applications will be processed as reinstatement applications.

(5) A registrant whose registration has expired may have the registration reinstated by complying with the requirements and procedures specified in Subsection 38-11-302(5).

R156-38a-401. Requirements for a Letter of Credit and/or Evidence of a Cash Deposit as Alternate Security for Mechanics' Lien.

To qualify as alternate security under Section 38-1-28 "evidence of a cash deposit" must be an account at a federally

insured depository institution that is pledged to the protected party and is payable to the protected party upon the occurrence of specified conditions in a written agreement.

KEY: licensing, contractors, liens

~~[July 26, 2004]~~2005

Notice of Continuation March 15, 2005

38-11-101

58-1-106(1)(a)

58-1-202(1)(a)

▼ ————— ▼

Commerce, Real Estate

R162-105

Scope of Authority

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28031

FILED: 06/15/2005, 17:15

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: It has come to the attention of 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. The correct scenario is the reverse: the properly licensed appraiser accepts the assignment, and then has the trainee assist him in only those portions of the appraisal process that are appropriate for a trainee to perform. The appraiser cannot delegate the entire assignment to a trainee and allow the trainee to complete the assignment independently. Enacting rules stating that trainees cannot solicit or accept assignments on their own behalf should help to control this abuse of the system by trainees. The federal Appraisal Subcommittee requires that trainee education must have been taken within the preceding five years. After January 1, 2008, the Appraisal Subcommittee will not permit supervisors to have more than three trainees. Therefore, a rule change to comply with the federal requirements is proposed. Some trainees who were previously state-registered appraisers do not understand that the rules on inspections by trainees apply to them. Therefore, a rule amendment clarifying this point is proposed. New disclosure requirements are proposed that will make it mandatory to disclose details of the inspection in an appraisal report (see proposed change to Rule R162-106). (DAR NOTE: The proposed amendment to Rule R162-106 is under DAR No. 28030 in this issue.)

SUMMARY OF THE RULE OR CHANGE: Trainees will be forbidden from soliciting appraisal work on their own behalf. They would only be able to solicit appraisal work on behalf of their supervising appraisers or the supervisor's appraisal firm. Once the assignment has been accepted, the supervisor would then delegate to the trainees those tasks that are appropriate for a trainee to perform, not the entire appraisal

assignment. Trainee education must be taken within five years prior to registering trainee status with the Division of Real Estate. Effective January 1, 2008, a supervising appraiser will only be allowed to supervise a maximum of three trainees at one time. In the property inspection subsections, it is made clear that the inspection provisions apply to trainees who were previously state-registered appraisers. All reports in appraisals in which an appraisal trainee participated will have to be written in compliance with a new standard requiring disclosure of details concerning the property inspection.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--State agencies do not employ appraisal trainees and therefore are not affected by rule regulating appraisal trainees. The State budget would not be affected by the portion of this rule change requiring disclosure of inspection details.

❖ LOCAL GOVERNMENTS: None--Local governments do not solicit appraisal work and therefore are not affected by rules regulating how an appraisal trainee may solicit appraisal business. Local Assessors' offices may employ unlicensed persons and train them to be appraisers, but it is not anticipated that the other changes to this rule will either cost or save local assessors' offices any money. If there are any costs or savings, they would be attributable to the federal requirements, and not these rules implementing the federal requirements. It is not anticipated that the portion of this rule that would require adding a few sentences concerning inspection details to an appraisal report would have any financial impact on local governments.

❖ OTHER PERSONS: The only persons affected by these rule changes would be supervising appraisers and their trainees. The portions of this rule amendment that simply clarify the relationship between supervisor and trainee and that clarify that trainees who were previously state-registered appraisers are bound by the same inspection rules as other trainees should not either cost supervisors or trainees money or save them any money. The trainee is already forbidden by the licensing law from appraising on his own, and therefore the trainee should not be accepting assignments anyway. There may be some cost to a prospective appraisal trainee if he took his education so far in the past that he needs to retake it before he may be employed as a trainee, but those costs would be attributable to the federal requirements, and not this rule amendment implementing the federal requirements. There may be some costs to supervisors once the limitation on how many trainees they may employ goes into effect, since trainees typically perform appraisal-related duties at lower salaries than licensed appraisers, but the limitation on the number of trainees is mandated by the Federal Appraisal Subcommittee. Therefore, any costs would be attributable to the federal requirements, and not these rules implementing the federal requirements. The portion of this rule change requiring the addition of a few sentences concerning inspection details to an appraisal report will neither cost nor save appraisers or their trainees any money.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The portions of this rule amendment that simply clarify the relationship between supervisor and trainee and that clarify that trainees who were previously state-registered appraisers are bound by the same inspection rules as other trainees should not cost supervisors or trainees any money. The trainee is already forbidden by the licensing law to appraise on his own, and therefore the trainee should not be accepting assignments anyway. This rule amendment may cause a prospective appraisal trainee to incur some cost if he took his education so far in the past that he needs to retake it before he may be employed as a trainee, but those costs would be attributable to the federal requirements, and not this rule amendment implementing the federal requirements. There may be some costs to supervisors once the limitation on how many trainees they may employ goes into effect, since trainees typically perform appraisal-related duties at lower salaries than licensed appraisers, but the limitation on the number of trainees is mandated by the Federal Appraisal Subcommittee. Therefore, any costs would be attributable to the federal requirements, and not these rules implementing the federal requirements. The portion of this rule change requiring the addition of a few sentences concerning inspection details to an appraisal report should not cost appraisers or their trainees any money.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing clarifies the role of a trainee and the trainee's supervisor, includes requirements for appraiser trainee education and supervisor limits on trainees to comply with federal requirements, and clarifies the application of the rules to trainees who were previously registered appraisers but not yet licensees under the new law. No fiscal impact to businesses is anticipated from such clarifying provisions. Russell C. Skousen, Executive Director, Department of Commerce.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/01/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 08/02/2005

AUTHORIZED BY: Dexter Bell, Director

R162. Commerce, Real Estate.**R162-105. Scope of Authority.****R162-105-1. Scope of Authority.**

105.1 Transaction value. "Transaction value" means:

105.1.1 For loans or other extensions of credit, the amount of the loan or extension of credit;

105.1.2 For sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and

105.1.3 For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

105.2 State-Licensed Appraisers. In federally-related transactions, the Utah Real Estate Appraiser Licensing Act and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and related federal regulations allow State-Licensed Appraisers to perform the appraisal of non-complex one to four residential units having a transaction value of less than \$1,000,000 and complex one to four residential units having a transaction value of less than \$250,000.

105.2.1 Subject to the transaction value limits in Section 105.2, State-Licensed Appraisers may also perform appraisals in federally-related transactions of vacant or unimproved land that is utilized for one to four family purposes, or for which the highest and best use is 1-4 family purposes, so long as net income capitalization analysis is not required by the terms of the assignment.

105.2.2 State-Licensed Appraisers may not perform appraisals of subdivisions in federally-related transactions for which a development analysis/appraisal is necessary or for which discounted cash flow analysis is required by the terms of the assignment.

105.3 Trainees.

105.3.1 For the purposes of these rules, "trainee" means a person who is working under the direct supervision of a State-Licensed or State-Certified Appraiser to earn points for licensure.

105.3.2 Appraisal-related duties by unlicensed persons. Unlicensed persons who have not qualified as trainees as provided in Subsection 105.3.3 may perform only clerical duties in connection with an appraisal. For the purposes of this rule, appraisal-related clerical duties include typing an appraiser's research notes or an appraiser's report, taking photographs of properties, and obtaining copies of public records. Only those persons who have properly qualified as trainees as provided in Subsection 105.3.3 may perform the following appraisal-related duties: participating in property inspections, measuring or assisting in the measurement of properties, performing appraisal-related calculations, participating in the selection of comparables for an appraisal assignment, making adjustments to comparables, and drafting or assisting in the drafting of an appraisal report. The supervising appraiser shall be responsible to determine the point at which a trainee is competent to participate in each of these activities.

105.3.2.1 A trainee may not solicit an assignment or accept an assignment on behalf of anyone other than the trainee's supervisor or the supervisor's appraisal firm. All engagement letters shall be addressed to the supervisor or the supervisor's appraisal firm, not to the trainee. In all appraisal assignments, the supervisor shall delegate only such duties as are appropriate to the trainee and shall directly supervise the trainee in the performance of those duties.

105.3.3 In order to become a trainee, the person must have successfully completed 75 classroom hours of State-approved education in subjects related to real estate appraisal, including the

Uniform Standards of Professional Appraisal Practice (USPAP), must have passed the final examination in the USPAP course, and must file a notification with the Division as provided in Subsection 105.3.3.1. The education required by this Subsection must have been completed within the 5 years preceding the filing of the notification required by Subsection 105.3.3.1.

105.3.3.1 Trainee Notification. Prior to performing any of the appraisal-related activities for which points will be claimed toward licensure, a trainee must file with the Division a notification in the form required by the Division. In addition to any identifying information about the trainee required by the Division, the notification shall contain the name and business address of the appraiser(s) who will supervise the trainee in the performance of the appraisal-related duties, and shall be signed by the supervisor. The notification shall also contain the course names, course provider names, and course completion dates for the 75 hours of education required by Subsection 105.3.3. The original course completion certificates shall be submitted to the Division with the notification.

105.3.3.2 Except as provided in Subsection 105.3.3.3, no experience points will be granted toward licensure for trainee experience that is claimed to have been earned prior to the date the notification was filed with the Division.

105.3.3.3 Until five years after the effective date of this rule, points that were earned prior to the effective date of this rule may be claimed and will be awarded to applicants who are able to document those points on the forms required by the Division, notwithstanding the fact that the points were earned prior to the date a trainee notification was filed with the Division.

105.3.4 Supervising Appraisers. A trainee may have more than one supervising appraiser. Effective January 1, 2008, a supervising appraiser may supervise a maximum of three trainees at one time.

105.3.5 Residential Property Inspections. A trainee, including a trainee who was previously a state-registered appraiser, must be accompanied by a supervising State-Licensed Appraiser, State-Certified Residential Appraiser, or State-Certified General Appraiser on all inspections of residential property until the trainee has performed 100 inspections of residential properties in which both the interior and the exterior of the properties are inspected. All reports in appraisals in which a trainee participated in the inspection of the subject property shall comply with the requirements of Section 106.9.

105.3.6 Non-Residential Property Inspections. A trainee, including a trainee who was previously a state-registered appraiser, must be accompanied by a supervising State-Certified General Appraiser on all inspections of non-residential property until the trainee has performed 20 inspections of non-residential properties in which both the interior and the exterior of the properties are inspected. All reports in appraisals in which a trainee participated in the inspection of the subject property shall comply with the requirements of Section 106.9.

105.3.7 Points for Licensure. A trainee may accumulate experience points for each duty listed below at the rate of 33.3% of the total points awarded from the Appraisal Experience Points Schedule under Section 104-18.1 or 104-18.2, not to exceed the maximum number of points awarded for each property. Trainee experience must be earned in at least three of the following categories. No more than one-third of the experience points submitted toward licensure may come from any one of the following categories:

(a) participation in selecting comparables for an appraisal assignment - 33.3% of total points

(b) participation in making adjustments to comparables - 33.3% of total points

(c) drafting appraisal reports - 33.3% of total points

(d) as provided in Sections 105.3.5 and 105.3.6, inspecting a property that is the subject of an appraisal or that may be used as a comparable in an appraisal, and measuring the property - 33.3% of total points as long as both an interior and exterior inspection of the property is performed. No points will be granted for inspections that do not include both an interior and an exterior inspection.

105.3.8 Credit will be given for appraisal experience earned only within five years immediately preceding the licensure or certification application. Applicants who believe the Experience Points Schedules do not adequately reflect their experience may refer to Section 104-17.

105.3.9 All trainees are prohibited from signing an appraisal report or discussing an appraisal assignment with anyone other than the appraiser responsible for the assignment, state enforcement agencies and such third parties as may be authorized by due process of law, or a duly authorized professional peer review committee.

105.3.10 A state-licensed or state-certified appraiser who supervises a trainee shall be responsible for the training and direct supervision of the trainee.

105.3.10.1 Direct supervision shall consist of critical observation and direction of all aspects of the appraisal process and accepting full responsibility for the appraisal and the contents of the appraisal report. The supervising appraiser shall be responsible to personally inspect each residential property that is appraised with a trainee until the trainee has performed 100 residential inspections as provided in Subsection 105.3.5 and 20 non-residential inspections as provided in Subsection 105.3.6. The supervising appraiser must actively supervise those inspections and the resulting appraisals.

105.3.11 A supervising appraiser shall require the trainee to maintain a log in a form satisfactory to the Board which shall contain, at a minimum, the following information for each appraisal.

- (a) Type of property;
- (b) Address of appraised property;
- (c) Description of work performed;
- (d) Number of work hours;
- (e) Signature and state license/certification number of the supervising appraiser; and
- (f) Client name and address.

105.3.12 The trainee shall maintain a separate appraisal log for each supervising appraiser.

105.4. Trainee Status after Revocation, Surrender, or Suspension of License or Certification.

105.4.1 Trainee Status after Revocation or Surrender of License or Certification. Unless otherwise ordered by the Board, an appraiser whose appraiser certification or license has been revoked by the Board, or who has surrendered a certification or license as a result of an investigation by the Division, may not serve as a trainee for a period of five years after the date of the revocation or surrender, nor may a licensed or certified appraiser employ or supervise him during that period in the performance of the activities permitted trainees.

105.4.2 Trainee Status while License or Certification is Suspended. Unless otherwise ordered by the Board, any appraiser whose appraiser license or certificate has been suspended by the Board as a result of an investigation by the Division may not serve as a trainee during the period of suspension, nor may a licensed or certified appraiser employ or supervise him during that period in the performance of the activities permitted trainees.

KEY: real estate appraisals

[September 10, 2004]2005

Notice of Continuation January 13, 2004

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

Commerce, Real Estate R162-106 Professional Conduct

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 28030

FILED: 06/15/2005, 16:13

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A new subsection is proposed to be added to the Professional Conduct rule to require that details concerning the property inspection be included in an appraisal report. Also, S.B. 172 (2005 General Session) eliminated the requirement that appraisers use seals on their appraisal reports. Therefore, the rules related to these seals are eliminated. (DAR NOTE: S.B. 172 is found at UT L 2005 Ch 199, and was effective 05/02/2005.)

SUMMARY OF THE RULE OR CHANGE: All appraisal reports will be required to include a statement concerning whether the subject property was inspected and by whom, the date of the inspection, and whether the inspection was an exterior inspection only or both an exterior and an interior inspection. Provisions related to the use of a seal on a certified appraiser's reports are deleted.

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

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None--Requiring a sentence or two of detail about property inspections in an appraisal report has no impact on the State budget. Whether or not appraisers use seals on their appraisal reports has no impact on the State budget.

❖ **LOCAL GOVERNMENTS:** Requiring a sentence or two of detail about property inspections in an appraisal report will neither cost nor save local governments any money. Eliminating the requirement of seals on appraisal reports will not cost local governments any money, but those local government agencies who employ staff appraisers will save the cost of purchasing the seals for their employees.

❖ **OTHER PERSONS:** The only other persons who could be impacted by a requirement to write a sentence or two of detail about the property inspection in an appraisal report would be appraisers. Adding an additional sentence or two to an appraisal report will neither cost nor save appraisers any money. The only persons who are impacted by the requirement of a seal on an appraisal report are appraisers. Eliminating seals on appraisal reports will save appraisers the cost of purchasing the seals.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Adding an additional sentence or two to an appraisal report will not cost appraisers any money. Eliminating seals on appraisal reports will not cost appraisers any money; it will actually save them the cost of purchasing seals.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Pursuant to S.B. 172 (2005 General Session), this rule deletes language regarding the requirement to use an appraisal seal. Therefore, no fiscal impact to businesses is foreseen beyond those anticipated in the passage of S.B. 172. In addition, this rule filing requires information about inspections to be provided in property appraisals. No fiscal impact to businesses is anticipated from this requirement. 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 08/01/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 08/02/2005

AUTHORIZED BY: Dexter Bell, Director

R162. Commerce, Real Estate.

R162-106. Professional Conduct.

R162-106-3. Signatures~~[, Size]~~ and Use of Seal.

~~[106.3.1. State Certified Appraiser's Seal.~~

~~106.3.1.1. When signing a certified appraisal report, State-Certified General Appraisers and State-Certified Residential Appraisers shall place on at least the certification page of the appraisal report, immediately below the appraiser's signature, the seal required by Section 61-2b-17(3)(e).~~

~~106.3.1.2. The seal to be affixed on reports prepared by state-certified appraisers shall contain the words "Utah State-Certified Residential Appraiser" or "Utah State-Certified General Appraiser" along with the appraiser's certificate number and expiration date. The zeros preceding the certificate number may be deleted.~~

~~106.3.1.3. The seal may be reproduced as a stamp with ink that can be copied, or may be inserted by computer in an appraisal report at the appropriate place.]~~

106.3.[2]1. State-Licensed Appraisers. State-Licensed appraisers may not place a seal on an appraisal report or use a seal in any other manner likely to create the impression that the appraiser is a state-certified appraiser.

106.3.[3]2. Signatures.

106.3.[3]2.1. Signature stamps. Appraisers may not affix their signatures to appraisal reports by means of a signature stamp.

106.3.[3]2.2. Appraisers may not affix their signatures to blank or partially completed appraisal reports which will be filled in later by anyone other than the appraiser who has signed the reports.

106.3.[3]2.3. If it is necessary for an appraiser to delegate authority to another individual to sign the appraiser's signature on an appraisal report, the other individual may sign the report for the appraiser only if: a) the report explicitly discloses that the other individual has been authorized to sign the report for the appraiser; b) the permission must have been granted in writing and limited to a specific property address; c) a copy of the written permission to sign must be attached to the report; and d) the appraiser who signs the other's signature must write the word "by" followed by his own name after the other's signature.

106.3.[3]2.4. Digital signatures. A digital signature may be used in place of a handwritten signature only if: a) the software program which generates the digital signature has a security feature; and b) the appraiser ensures that his signature is protected and that no one other than the appraiser has control of that signature.

R162-106-9. Inspections.

All appraisal reports shall include a statement indicating whether or not the subject property was inspected as part of the appraisal process, and if any inspections were done, the following information concerning the inspections shall also be included:

(a) the names of all appraisers and appraisal trainees who participated in each property inspection;

(b) whether each inspection was an exterior inspection only or both an exterior and an interior inspection; and

(c) the date that each inspection was performed.

KEY: real estate appraisals, conduct

~~[July 28, 2004]2005~~

Notice of Continuation March 27, 2002

61-2b-27

Environmental Quality, Air Quality **R307-101-2** Definitions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28029

FILED: 06/15/2005, 09:02

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the change is to update the definition of "clearing index" in Utah rules.

SUMMARY OF THE RULE OR CHANGE: The "Clearing Index" is a measure of how efficiently smoke and other air pollutants will disperse in the atmosphere. The index is used to determine if air quality will be degraded by open burning operations (Rule R307-201) or industrial processes as specified in approval orders (Rule R307-401). Beginning in the early 1970s, the

National Weather Service (NWS) began forecasting a daily clearing index for three defined air basins within the State of Utah. The Division of Air Quality made the clearing index values available to government users via fax and a recorded telephone message. In recent years, NWS technological improvements have made it possible to produce highly specific and representative three-day clearing index forecasts for any point within the state. These forecasts are freely available to the public through a simple interface on the NWS web page. This proposal deletes all references to the three-basin clearing index and allows the NWS to apply their best available technology to forecast and disseminate the clearing index. Local government users have been contacted to determine if the new definition and method of accessing the clearing index will be acceptable. All comments received were positive.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The Division of Air Quality (DAQ) will save a small amount of time because DAQ will no longer notify local fire departments of the three-basin clearing index each day. Instead, the NWS clearing index information is available on the NWS web site.
- ❖ LOCAL GOVERNMENTS: It is not known whether the new system will save money for local governments. However, the more precise clearing index for specific areas will benefit the local fire departments in knowing when conditions meet the criteria in the rule for issuing permits to allow open burning in their own locales.
- ❖ OTHER PERSONS: Currently, anyone who desires a permit to conduct open burning must wait for the local fire department to determine whether the clearing index meets the rule's criteria for allowing burning. Under the new system, anyone can check the NWS web site for the specific clearing index applicable to the location, and can view the forecast for the next few days in order to pick the best time to conduct the burn. This is clearly a benefit, though no dollar amount can be determined.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Currently, anyone who desires a permit to conduct open burning must wait for the local fire department to determine whether the clearing index is meets the rule's criteria for allowing burning. Under the new system, anyone can check the NWS web site for the specific clearing index applicable to the location, and can view the forecast for the next few days in order to pick the best time to conduct the burn. This is clearly a benefit, though no dollar amount can be determined.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: For businesses whose approval orders require use of the clearing index to determine whether or not burning is allowed, this change will allow more accurate and more timely determinations. Dianne R. Nielson, Executive Director

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

ENVIRONMENTAL QUALITY
 AIR QUALITY
 150 N 1950 W
 SALT LAKE CITY UT 84116-3085, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jan Miller at the above address, by phone at 801-536-4042, by FAX at 801-536-4099, or by Internet E-mail at janmiller@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/01/2005

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 7/19/2005 at 1:30 PM, DEQ Building, 1968 N 1950 W, Room 201, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 09/08/2005

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.

R307-101. General Requirements.

R307-101-2. Definitions.

Except where specified in individual rules, definitions in R307-101-2 are applicable to all rules adopted by the Air Quality Board.

.....

"Clean Air Act" means federal Clean Air Act as amended in 1990.

"Clean Coal Technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

"Clean Coal Technology Demonstration Project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"Clearing Index" means an indicator of the predicted rate of clearance of ground level pollutants from a given area. This number is ~~calculated~~ provided by the National Weather Service, ~~from daily measurements of temperature lapse rates and wind speeds from ground level to 10,000 feet. The State has been divided into three separate air quality areas for purposes of the clearing index system.~~

—(1) Area 1 includes those valleys below 6500 feet above sea level and west of the Wasatch Mountain Range and extending south through the Wasatch and Aquarius Plateaus to the Arizona border. Included are the Salt Lake, Utah, Skull and Escalante Valleys and valleys of the Sevier River Drainage.

—(2) Area 2 includes those valleys below 6500 feet above sea level and east of the Wasatch Mountain Range. Included are Cache Valley, the Uintah Basin, Castle Valley and valleys of the Green, Colorado, and San Juan Rivers.

—(3) Area 3 includes all valleys and areas above 6500 feet above sea level.]

"Commence" as applied to construction of a major source or major modification means that the owner or operator has all necessary pre-construction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Compliance Schedule" means a schedule of events, by date, which will result in compliance with these regulations.

"Construction" means any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of a source which would result in a change in actual emissions.

"Control Apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

.....

KEY: air pollution, definitions
2005
Notice of Continuation June 5, 2003
19-2-104



**Environmental Quality, Radiation
Control
R313-16
General Requirements Applicable to the
Installation, Registration, Inspection,
and Use of Radiation Machines**

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 27991
FILED: 06/06/2005, 12:05

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Radiation Control Board observed that renewal of a registration certificate as a Qualified Expert was more rigorous than obtaining an initial certificate. The Board instructed the

Division of Radiation Control to propose an amendment to the rule.

SUMMARY OF THE RULE OR CHANGE: Subsection R313-16-293(3) was added so that the initial requirements to obtain a registration certificate as a Qualified Expert includes the submission of two inspection reports for work performed within the last two years. This is a new requirement for initial applicants and it makes the requirements consistent with the renewal requirements in Section R313-16-296. Subsection R313-16-296(1) was reformatted to include Subsections R313-16-296(1)(a) and R313-16-296(1)(b). An introductory statement was added to clarify that timely renewal of a registration certificate involves completion of both subsections. Subsection R313-16-296(2) was renumbered as R313-16-296(1)(b). This subsection includes a clarification that qualified experts must attach to their renewal applications documentation that they performed the minimum number of inspections in Utah each year the registration certificate was in effect. New requirements were also added so that, if registered individuals did not complete the required inspections in Utah, they could renew their certificates by relying upon inspection work completed in another jurisdiction. In these circumstances, applicants must submit documentation on four inspections. Subsection R313-16-296(2) was added so that there is a clear consequence for failing to renew a registration certificate.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The additional regulatory requirements do not affect the records management practices of the Agency. Therefore, the changes will not result in a cost or savings to the State Budget.

❖ LOCAL GOVERNMENTS: The rules that are being changed do not affect local governments because there are no local governments that employ a Qualified Expert. Therefore, there will be no cost or savings for local governments.

❖ OTHER PERSONS: The changes to the rule only apply to persons registered under Section R313-16-293. Currently, there are ten individuals registered as a Qualified Expert and each registration is valid through January 31, 2008. If they all seek reregistration and the individual cost, as outlined under "Affected persons" below is \$10, then the aggregate anticipated cost is \$100 every 3 years. The Division of Radiation Control has no way of anticipating the possible number of new applicants, so further refinement of this cost analysis is not possible.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for affected persons will likely be less than \$10 every 3 years.

The costs are associated with copying and mailing documents to the Agency.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Inspection services performed by independent consultants, Qualified Experts, are generally owner operated businesses. The fiscal impact the rule may have on businesses is expected to be the same as the

compliance costs for affected persons. Dianne R. Nielson, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Craig Jones at the above address, by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at cwjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/01/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 08/12/2005

AUTHORIZED BY: Dane Finerfrock, Director

R313. Environmental Quality, Radiation Control.

R313-16. General Requirements Applicable to the Installation, Registration, Inspection, and Use of Radiation Machines.

R313-16-293. Application for Registration of Inspection Services.

(1) Each qualified expert who is providing or offering to provide inspection services at facilities registered with the Executive Secretary shall complete an application for registration on a form prescribed by the Executive Secretary and shall submit all information required by the Executive Secretary as indicated on the form. A qualified expert must complete the registration process prior to providing services.

(2) Individuals applying for registration under Section R313-16-293 shall personally sign and submit to the Executive Secretary an attestation statement:

(a) that they have read and understand the requirements of these rules; and

(b) that they will document inspection items defined by the Executive Secretary on a form prescribed by the Executive Secretary; and

(c) that they will follow guidelines for the evaluation of x-ray equipment defined by the Executive Secretary; and

(d) that, except for those facilities where a registered qualified expert is a full-time employee, they will limit inspections to facilities with which they have no direct conflict of interest; and

(e) that radiation exposure measurements and peak tube potential measurements will be made with instruments which have been calibrated biennially by the manufacturer of the instrument or by a calibration laboratory accredited in x-ray calibration procedures by the American Association of Physicians in Medicine, American Association for Laboratory Accreditation, Conference of Radiation Control Program Directors, Health Physics Society or the National Voluntary Laboratory Accreditation Program; and

(f) that the calibration of radiation exposure measuring and peak tube potential measuring instruments used to evaluate compliance of x-ray systems with the requirements of these rules will include at least secondary level traceability to a National Institute of Standards and Technology, or similar international agency, transfer standard instrument or transfer standard source; and

(g) that they will make available to representatives of the Executive Secretary documents concerning the calibration of any radiation exposure measuring or peak tube potential measuring instrument used to evaluate compliance of x-ray systems; and

(h) that they or the registrant will submit to the Executive Secretary, within 30 calendar days after completion of an inspection, a written report of compliance or noncompliance; and

(i) that reports of items of noncompliance will include:

(i) the name of the facility inspected, and

(ii) the date of the inspection, and

(iii) the manufacturer, model number, and serial number or Utah identification number of the control unit for the radiation machine, and

(iv) the requirements of the rule where compliance was not achieved, and

(v) the manner in which the facility or radiation machine failed to meet the requirements, and

(vi) a signed commitment from the registrant of the radiation machine facility that the problem will be fixed within 30 days of the date the written report of noncompliance is submitted to the Executive Secretary; and

(vii) that all reports of compliance or noncompliance will contain a statement signed by the qualified expert acknowledging under penalties of law that all information contained in the report is truthful, accurate, and complete; and

(viii) that they acknowledge that they are subject to the provisions of Section R313-16-300.

(3) Individuals applying for registration under Section R313-16-293 shall attach to their application a copy of two inspection reports that demonstrate their work product follows the evaluation guidelines defined by the Executive Secretary pursuant to Subsection R313-16-293(2)(c). The inspection reports shall pertain to inspections performed within the last two years.

R313-16-296. Renewal of Registration Certificate for Inspection Services.

(1) Timely renewal of a registration certificate for inspection services is possible when:

(a) the [Q]qualified expert[s] [shall] files an application for renewal of a registration certificate for inspection services 30 days in advance of the registration certificate expiration date and in accordance with Section R313-16-293[-], and

[(2)](b) the qualified expert [Applicants shall] attaches to the application documentation that they performed a minimum of two inspections in Utah under these rules each year the previous registration certificate was in effect. An applicant who did not complete the minimum number of inspections in Utah may, as an alternative, attach to the application documentation that they performed four inspections at facilities in other states. These four inspections shall demonstrate their work product follows the evaluation guidelines defined by the Executive Secretary pursuant to Subsection R313-16-293(2)(c).

(2) A registered qualified expert who allows a registration certificate to expire is no longer a qualified expert and may not perform inspection services that will be accepted by the Executive Secretary. Reapplication may be accomplished pursuant to Section R313-16-293.

KEY: x-ray, inspection
~~[December 14, 2001]~~2005
 Notice of Continuation July 23, 2001
 19-3-104

▼ ————— ▼

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-200-3

Services Available

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 27977
 FILED: 06/02/2005, 08:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is necessary to restore limited dental services to Non-Traditional Medicaid recipients. The scope of these services is determined by the Primary Care Waiver found in Section 1115 of the Social Security Act (1999). In addition, this rulemaking is necessary to clarify that eye examinations or refractions in the Non-Traditional Medicaid program are limited to one per year and that eyeglasses are not covered.

SUMMARY OF THE RULE OR CHANGE: In Subsection R414-200-3(3)(f), language is added that clarifies the limitation on eye examinations or refractions and excludes eyeglasses as a covered service. In Subsection R414-200-3(3)(v), language that limits dental services to emergency only is deleted and replaced with language that restores limited dental services that include exams, X-rays, cleaning, fillings, and extractions.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-3; the Primary Care Waiver, Section 1115 of the Social Security Act (1999); and 42 CFR 440.100 and 42 CFR 440.120

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There is a total annual cost of \$2,228,000 to the state budget as a result of this rulemaking, \$643,900 in state general funds for the restoration of limited dental services with a federal match of \$1,584,100.
- ❖ **LOCAL GOVERNMENTS:** There is no budget impact to local governments as a result of this rulemaking because there is no funding from local governments for dental services.
- ❖ **OTHER PERSONS:** There is an annual increase of \$2,228,000 in revenue to dental providers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is an average annual increase in revenue of \$1,465 to a single dental provider based on the total number of 1,521 Medicaid dental providers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have a positive impact on providers and recipients of Medicaid. It restores a

limited dental benefit, consistent with Legislative appropriations. David N. Sundwall, MD, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Craig Devashrayee or Don Hawley at the above address, by phone at 801-538-6641 or 801-538-6483, by FAX at 801-538-6099 or 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov or dhawley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/01/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 08/02/2005

AUTHORIZED BY: David N. Sundwall, Executive Director

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

R414-200. Non-Traditional Medicaid Health Plan Services.

R414-200-3. Services Available.

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the NTHP.

(a) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(b) By signing an application for Medicaid coverage, the applicant agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

(2) Medical or hospital services for which providers are reimbursed under the Non-Traditional Medicaid Health Plan are limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(3) The following services, as more fully described and limited in provider contracts and provider manuals; are available to Non-Traditional Medicaid Health Plan enrollees:

(a) inpatient hospital services, provided by bed occupancy for 24 hours or more in an approved acute care general hospital under the care of a physician if the admission meets the established criteria for severity of illness and intensity of service;

(b) outpatient hospital services which are medically necessary diagnostic, therapeutic, preventive, or palliative care provided for less than 24 hours in outpatient departments located in or physically connected to an acute care general hospital;

(c) emergency services in dedicated hospital emergency departments;

(d) physician services provided directly by licensed physicians or osteopaths, or by licensed certified nurse practitioners, licensed certified nurse midwives, or physician assistants under appropriate supervision of the physician or osteopath.

(e) services associated with surgery or administration of anesthesia provided by physicians or licensed certified nurse anesthetists;

(f) vision care services by licensed ophthalmologists or licensed optometrists, within their scope of practice; limited to one annual eye examination or refraction and no eyeglasses.

(g) laboratory and radiology services provided by licensed and certified providers;

(h) physical therapy services provided by a licensed physical therapist if authorized by a physician, limited to ten aggregated physical or occupational therapy visits per calendar year;

(i) dialysis to treat end-stage renal failure provided at a Medicare-certified dialysis facility;

(j) home health services defined as intermittent nursing care or skilled nursing care provided by a Medicare-certified home health agency;

(k) hospice services provided by a Medicare-certified hospice to terminally ill enrollees (six month or less life expectancy) who elect palliative versus aggressive care;

(l) abortion and sterilization services to the extent permitted by federal and state law and meeting the documentation requirement of 42 CFR 440, Subparts E and F;

(m) certain organ transplants;

(n) services provided in freestanding emergency centers, surgical centers and birthing centers;

(o) transportation services, limited to ambulance (ground and air) service for medical emergencies;

(p) preventive services, immunizations and health education activities and materials to promote wellness, prevent disease, and manage illness;

(q) family planning services provided by or authorized by a physician, certified nurse midwife, or nurse practitioner to the extent permitted by federal and state law;

(r) pharmacy services provided by a licensed pharmacy;

(s) inpatient mental health services, limited to 30 days per enrollee per calendar year;

(t) outpatient mental health services, limited to 30 visits per enrollee per calendar year;

(u) outpatient substance abuse services;

(v) ~~dental emergency services only for relief of pain and infection, limited to an emergency examination, emergency x-ray and emergency extraction;~~ dental services, limited to exams, x-rays, cleaning, fillings, and extractions.

(w) interpretive services if they are provided by entities under contract with the Department of Health to provide medical translation services for people with limited English proficiency and interpretive services for the deaf;

(x) occupational therapy, limited to that provided for fine motor development and limited to ten aggregated physical or occupational therapy visits per calendar year; and

(y) chiropractic services, limited to six visits per calendar year.

(4) Emergency services are:

(a) limited to attention provided within 24 hours of the onset of symptoms or within 24 hours of diagnosis;

(b) for a condition that requires acute care and is not chronic;

(c) reimbursed only until the condition is stabilized sufficient that the patient can leave the hospital emergency department; and

(d) not related to an organ transplant procedure.

(5) The vision care benefit is limited to \$30 per year.

KEY: Medicaid, non-traditional, cost sharing

~~February 1, 2005~~

26-18

Human Services, Child and Family Services

R512-75

Rules Governing Adjudication of Consumer Complaints

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27981

FILED: 06/02/2005, 11:07

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section must be amended because of the passage of H.B. 5005 sponsored by Representative Matt Throckmorton during the 2002 Fifth Special Session. This bill repealed the Consumer Hearing Panel which was not funded during the General Session for fiscal year 2003. (DAR NOTE: H.B. 5005 is found at UT L 2002, 5th Spec. Sess. Ch 6, and was effective 07/23/2002.)

SUMMARY OF THE RULE OR CHANGE: The amendment removes all references to the Consumer Hearing Panel.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-4a-102 and 62A-4a-207

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Any savings to the state budget were recognized during the 2002 General Session when funding to the Consumer Hearing Panel was cut. There is no further anticipated cost or savings. The state may incur the cost of retaining their own counsel to represent them at an administrative hearing.

❖ LOCAL GOVERNMENTS: There is no cost to local government because this rule does not affect local government. This rule affects individuals who file complaints with the Division, local governments do not participate in this process.

❖ OTHER PERSONS: Complainants to the Office of the Child Protection Ombudsman who are not satisfied with the findings of that office will no longer be able to appeal to the the Consumer Hearing Panel.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Complainants to the Office of the Child Protection Ombudsman who are not satisfied with the findings of that office will no longer be able to appeal to the Consumer Hearing Panel. They may incur the

cost of retaining their own counsel to represent them at an administrative hearing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact on businesses. Lisa-Michele Church, Executive Director

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Adam F. Trupp at the above address, by phone at 801-538-8258, by FAX at 801-538-3993, or by Internet E-mail at AFTRUPP@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/01/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 08/02/2005

AUTHORIZED BY: Richard Anderson, Director

R512. Human Services, Child and Family Services.

R512-75. Rules Governing Adjudication of Consumer Complaints.

R512-75-1. Introductory Provisions.

(1) Authority and Purpose.

(a) This rule defines consumer complaint procedures in accordance with Subsection 62A-4a-102(4). These procedures are intended to provide for the prompt and equitable resolution of a consumer complaint filed in accordance with this rule.

(2) Definitions.

(a) The definitions contained in Section 63-46b-2 apply. In addition, the following terms are defined for the purposes of this section:

(i) "Absorbable within the Division's appropriation authority" means those expenditures that fall within the Division's budgetary parameters.

(ii) "Aggrieved Person" or "Complainant" means any person who is alleged to have been adversely affected by an act or omission of the Division or its employees.

(iii) The "Department" means the Department of Human Services.

(iv) The "Director" means the Director of the Division.

(v) The "Division" means the Division of Child and Family Services of the Department of Human Services, including its regional offices.

(vi) "Office of the Child Protection Ombudsman" means the office, separate from the Division of Child and Family Services, designated by the Department to investigate a consumer complaint regarding the Division of Child and Family Services.

(vii) "Ombudsman Service Review Analyst" means the representative from the Office of the Child Protection Ombudsman designated to investigate a consumer complaint.

(viii) "Reasonable time" means the time specified in the action plan.

R512-75-3. Procedures for Filing an Informal Non-adjudicative Complaint With the Office of the Child Protection Ombudsman.

(1) An aggrieved person may file a complaint to decision rendered by a regional office to the Office of the Child Protection Ombudsman, or if the Division is unable to resolve the complaint, it shall be forwarded to the Office of Child Protection Ombudsman according to the requirements of R515-1, Processing Complaints Regarding the Utah Division of Child and Family Services. [

~~—(2) A complaint to the Office of the Child Protection Ombudsman shall be submitted in writing on a form provided by the Office of the Child Protection Ombudsman.~~

~~—(3) If a consumer complaint indicates an immediate threat to the safety of a child, the Office of the Child Protection Ombudsman shall facilitate an immediate referral to Child Protective Services.~~

~~—(4) If a consumer complaint indicates no immediate risk to the child, and if there has been no attempt to resolve the problem with the caseworker or the regional director, the complaint shall be referred back to the Division.]~~

R512-75-4. Compliance with and Appeal of Recommendations of the Office of the Child Protection Ombudsman.

(1) Once OCPO completes an investigation according to the provisions of R515-1 and if recommendations are made to the Division, [F]the Division has ten days to agree with the recommendations[for the first response to OCPO].

(2) ~~[Appeal by the Division.~~

~~—]If [F]the Division does not agree with the recommendation, the Division may file an appeal to the recommendations of the Office of the Child Protection Ombudsman within 10 calendar days of receipt of the recommendations from the Office of Child Protection Ombudsman. The appeal shall be filed with the Department Executive Director and request that the recommendations be amended.[—If the Department Executive Director amends a recommendation made by the Office of the Child Protection Ombudsman, the Ombudsman may forward the case to the Consumer Hearing Panel for review. The Office of Child Protection Ombudsman shall notify the aggrieved person in writing of the decision.~~

~~—(3) DCFS Compliance with the Recommendations of the Office of the Child Protection Ombudsman.~~

~~—The Division shall have 30 calendar days to provide a status report of the complaint to the Office of Child Protection Ombudsman. The status report shall state the actions taken by the Division to implement the recommendations and shall include an anticipated date of completion.~~

~~R512-75-9. Scope and Applicability.~~

~~(a) The provisions of this section supersede the provisions of other Division rules which conflict.]~~

KEY: consumer hearing panel, grievance procedures

~~[November 18, 2003]~~2005

Notice of Continuation November 14, 2000

62A-4a-102

63-2-303

63-2-304

63-2-603

63-46b



Human Services, Child and Family
Services
R512-306
Independent Living Services, Education
and Training Voucher Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27982

FILED: 06/02/2005, 11:12

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose if this change is to implement the Education and Training Voucher (ETV) Program which assists foster individuals in making the transition to self-sufficiency in adulthood. The ETV Program provides financial resources through material benefits for postsecondary education and vocational training. This change will allow part-time students to participate, as well as full-time students.

SUMMARY OF THE RULE OR CHANGE: This change will allow part-time students to participate, as well as full-time students in the ETV Program.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-105 and Pub. L. No. 107-133

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This program will implement this new federal grant program requiring 20% state match (\$16,000) which will be absorbed by the Division's budget.

❖ LOCAL GOVERNMENTS: After careful review, there will be no impact on local government because the money for the program is funded through federal and state funds.

❖ OTHER PERSONS: Persons affected by this rule would be individuals approved for educational vouchers. Costs would be minimal and would only affect individuals who apply. Successful applicants will receive the training vouchers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs are minimal--\$10 or less, cost might include postage, transportation, and/or long distance calls as part of the application process.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The training vouchers for this program may be used at public or private colleges or public or private technical institutes. Lisa-Michele Church, Executive Director

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

HUMAN SERVICES

CHILD AND FAMILY SERVICES

Room 225

120 N 200 W

SALT LAKE CITY UT 84103-1500, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Adam F. Trupp at the above address, by phone at 801-538-8258, by FAX at 801-538-3993, or by Internet E-mail at AFTRUPP@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/01/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 08/02/2005

AUTHORIZED BY: Richard Anderson, Director

R512. Human Services, Child and Family Services.

R512-306. Independent Living Services, Education and Training Voucher Program.

R512-306-1. Purpose and Authority.

1) The Education and Training Voucher Program (ETV) assists individuals in foster care~~[foster individual's]~~ make a more successful~~[the]~~ transition to self-sufficiency in adulthood. The Education and Training Voucher Program provides the financial resources for postsecondary education and vocational training necessary to obtain employment or to support the individual's employment goals.

2) The Education and Training Voucher Program is authorized by Pub. L. No. 107-133, which is incorporated by reference. 20 USC 1087kk and 20 USC 108711 (2001) are also incorporated by reference.

R512-306-2. Definitions.

1) The following terms are defined for the purposes of this rule:

- a) Institution of higher education means a school that:
 - i. Awards a bachelor's degree or not less than a two-year program that provides credit towards a degree, or
 - ii. Provides not less than one year of training towards gainful employment, or
 - iii. Is a vocational program that provides training for gainful employment and has been in existence for at least two years, and that also meets all of the following:

~~[*]A.~~ Admits as regular students only persons with a high school diploma or equivalent; or who are beyond the age of compulsory school attendance (Section 53A-11-101 and 53A-11-102).

~~[*]B.~~ Public or non-profit facility; ~~[]~~ and

~~[4]C.~~ Accredited or pre-accredited by a recognized accrediting agency that the Secretary of Education determines to be reliable and is authorized to operate in the state.

b) Satisfactory progress means maintaining at least a C grade average or 2.0 on a 4.0 scale on a cumulative basis or equivalent passing status as determined by the educational institution.

c) GED means General Education Development.

d) Division means Division of Child and Family Services.

e) Foster care means substitute care for children in the custody of the Division and provided by families licensed by the Department of Human Services, Office of Licensing~~[individual in the custody of the Department of Human Services/Division of Child and Family Services]~~ and/or Indian Tribes.

f) Full-time means enrollment in the standard number of credit hours for each semester or quarter as defined by the educational institution.

g) Part-time means enrollment in fewer credit hours than the full-time standard as defined by the educational institution.

R512-306-3. Scope of Program.

1) To be eligible for the Education and Training Voucher Program, an individual must meet all of the following requirements:

a) An individual in foster care who has not yet reached~~[attained]~~ 21 years of age, or

b) An individual no longer in foster care who reached~~[attained]~~ 18 years of age while in foster care and who has not yet reached~~[attained]~~ 21 years of age~~[-]~~ or

c) An individual adopted from foster care after reaching~~[attaining]~~ 16 years of age and who has not yet attained 21 years of age~~[-]~~

d) Have graduated from high school or earned a GED;

e) Have an individual educational assessment and individual education plan completed by DCFS or their designee;

f) Submit a completed application for the Education and Training Voucher Program;

g) Be accepted to a qualified college, university, or vocational program;

h) Apply for and accept available financial aid from other sources before obtaining funding from the Education and Training Voucher Program;

i) Enroll as a full-time or part-time student in the college, university or vocational program; and

j) Maintain a 2.0 cumulative grade point average on a 4.0 scale or equivalent as determined by the educational institution.

2) The application and attachments will be reviewed and approved by regional independent living program staff or their designee. Individuals meeting all requirements will be accepted for program participation when [available]~~[ETV funding is available]~~for this purpose permits. If demand exceeds available funding, the Division may establish a waiting list which will then be awarded to the applicants in the order received on a first come first serve basis for funding or the Division may approve applications for lesser amounts of funding. The individual will receive written notice of approval or denial of the application. If denied or terminated, a written reason for denial will be provided~~[and will include instructions about how to appeal the decision].~~

3) If an application for benefits under the Education and Training Vouches program is denied, the applicant has the right to appeal the decision through an administrative hearing in accordance with Section as per 63-46b-3 et seq.

4) The ~~[H]~~ individual may participate in the Employment and Training Voucher Program until the completion of:

a) the degree or vocational program; or

b) reach age 21~~[, with one exception].~~

i) If you reach 21 while ~~[H]~~ enrolled in the ETV program on the date age 21 is attained, the individual may continue in the program until age 23 as long as the individual is attending an accredited or pre-accredited college, university, or vocational program full-time or part-time, is making satisfactory progress, and funding continues to be available. The individual must make a written request and receive a written approval prior to 21st birthday to be continued for eligibility for the ETV program.

~~[4]5)~~ The individual must provide ongoing documentation of full-time or part-time enrollment, satisfactory progress as detailed in the individual education plan, additional requests for funding, and any changes in total costs for attendance or other financial aid to the Division in order to continue receiving benefits under the program.

6) A program participant will receive written notice that they are on probationary status if the following condition applies:

a) An individual that receives less than a 2.0 GPA in a single grading period will receive written notice that they are on probationary status. The individual will have one subsequent grading period to regain at least a 2.0 GPA to continue in the program.

b) Upon completion of a satisfactory grading period, participants will be notified that the probation period is over.

c) Participants that do not receive satisfactory grades while on probation will receive written notice that they are no longer eligible for the ETV program.

~~[5]7)~~ An individual under age 21 who has previously been denied acceptance to the program or who lost eligibility for the program due to not making satisfactory progress or not attending full-time may reapply for the program at any time.

~~6) If an application for benefits under the Education and Training Vouches program is denied, the applicant will have the right to appeal the decision through an administrative hearing in accordance with Section 63-46b-3 et seq.]~~

~~[7]8)~~ An individual may receive vouchers up to a maximum amount of \$5,000 per year through the Education and Training Voucher Program. Amounts are determined by the cost of tuition at specific educational institutions and enrollment status.

a) In accordance with 20 USC 1087kk, the total amount awarded may not exceed the total cost of attendance, as described in R512-306-4, minus:

i) expected contributions from the individual's family; and~~[minus]~~

ii) estimated financial assistance from other State or Federal grants or programs.

b) Awards are subject to the availability of Division ETV funds appropriated for this program.

~~[b]c)~~ In accordance with 42 USC 677(i)(5), the amount of benefits received through the Education and Training Voucher Program may be disregarded in determining a individual's eligibility for, or amount of, any other Federal or Federally supported assistance.

~~e) Awards are subject to the availability of Division ETV funds appropriated for this program.]~~

R512-306-4. Cost of Attendance.

1) The cost of attendance, is authorized in 20 USC 1087II.

KEY: foster care, independent living
~~September 22, 2004~~ 2005
 62A-4a-105

▼ ————— ▼

**Labor Commission, Occupational
 Safety and Health**
R614-1-4
Incorporation of Federal Standards

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 28013

FILED: 06/13/2005, 07:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The federal Occupational Safety and Health Administration (OSHA) recently granted a variance permitting alternative methods of performing work on tall chimneys. This proposed amendment to Utah occupational safety and health regulations incorporates the federal variance.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment incorporates by reference 69 FR 153/Tuesday, August 10, 2004, pages 48754 through 48760, "Alberici Mid-Atlantic, LLC, et al., Application for Permanent Variance and Interim Order, Grant of Interim Order, and Request for Comments; Notice." This variance applies to employers engaged in construction, remodeling, repairing, maintaining, inspecting, or demolishing tall chimneys made of reinforced concrete, brick and steel. The variance allows use of certain hoist systems, including personnel cages, personnel platforms and boatswains' chairs, to transport employees to various heights inside and outside a chimney. The variance also allows attachment of a hopper or concrete bucket to the hoist system to raise or lower material inside or outside a chimney.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 34A, Chapter 6

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 69 FR 153/Tuesday, August 10, 2004, Pages 48754 to and including 48760, "Alberici Mid-Atlantic, LLC, Commonwealth Dynamics, Inc., and R and P Industrial Chimney Co. Inc., Application for Permanent Variance and Interim Order, Grant of Interim Order, and request for Comments; Notice"

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There will be no increase to the state budget as a result of enforcing or regulating this variance. The substantive provisions of the variance will have no impact on the state budget because the state is not engaged in performing work on the types of tall chimneys that are subject to this proposed amendment.

❖ **LOCAL GOVERNMENTS:** The substantive provisions of the variance will have no impact on local governments' budgets

because local governments are not engaged in performing work on the types of tall chimneys that are subject to this proposed amendment.

❖ **OTHER PERSONS:** By providing alternative means to safely transport employees and materials necessary for work on tall chimneys, the proposed amendment will reduce the cost of such work. The precise amount of savings has not been quantified.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment does not impose any new compliance requirements. Consequently, there are no compliance costs associated with this amendment. However, by providing a choice of techniques to employers, the rule will permit a reduction in compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: OSHA evaluation of this proposal indicates it is safe and, at least in some applications, cost effective. Furthermore, employers are not obligated to use the methods identified in the variance. They may instead continue to use other methods already permitted by regulation. Under these circumstances, the proposed amendment will not have any adverse fiscal impact on businesses. R. Lee Ellertson, Commissioner

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

LABOR COMMISSION
 OCCUPATIONAL SAFETY AND HEALTH
 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:

William Adams at the above address, by phone at 801-530-6897, by FAX at 801-530-7606, or by Internet E-mail at wadams@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/01/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 08/02/2005

AUTHORIZED BY: R Lee Ellertson, Commissioner

R614. Labor Commission, Occupational Safety and Health.

R614-1. General Provisions.

R614-1-4. Incorporation of Federal Standards.

A. General Industry Standards.

1. Sections 29 CFR 1910.21 to 1910.999 and 1910.1000 through the end of part 1910 of the July 1, 2002, edition are incorporated by reference.

2. 29 CFR 1908, July 1, 2001, is incorporated by reference.

3. 29 CFR 1904, July 1, 2001, is incorporated by reference.

4. FR Vol. 67, No. 126, Monday, July 1, 2002, Pages 44037 to and including 44048, "29 CFR Part 1904 Occupational Injury and

Illness Recording and Reporting Requirements; Final Rule" is incorporated by reference.

5. FR Vol. 67, No. 216, Thursday, November 7, 2002, Pages 67949 to and including 67965, "Exit Routes, Emergency Action Plans, and Fire Protection Plans; Final Rule" is incorporated by reference.

6. FR Vol. 67, No. 242, Tuesday, December 17, 2002, Pages 77165 to and including 77170, "Occupational Injury and Illness Recording Requirements: Final Rule" is incorporated by reference.

7. FR Vol. 68, No. 105, Monday, June 2, 2003, Pages 32637 to and including 32638, "29 CFR Part 1910.178 Powered Industrial Trucks; Final Rule" technical amendment in incorporated by reference.

8. FR Vol. 68, No. 125, Monday June 30, 2003, Pages 38601 to and including 38607, "29 CFR Part 1904 Occupational Injury and Illnesses Recording and Reporting Requirements; Final Rule" is incorporated by reference.

9. FR Vol. 68, No. 250, Wednesday, December 31, 2003, Pages 75776 to and including 75780, "Respiratory Protection for M. Tuberculosis"; Final Rule is incorporated by reference.

10. FR Vol. 69, No. 31, Tuesday, February 17, 2004, Pages 7351 to and including 7366, "Commercial Diving Operations"; Final Rule is incorporated by reference.

11. FR Vol. 69, No. 110, Thursday June 8, 2004, Pages 31880 to and including 31882, "29 CFR 1910/1926; "Mechanical Power-Transmission Apparatus; Mechanical Power Presses; Telecommunications; Hydrogen"; Final Rule; technical amendments Final Rule" is incorporated by reference.

12. FR Vol. 69, No. 149, Wednesday, August 4, 2004, Pages 46986 to and including 46994, "Controlled Negative Pressure REDON Fit Testing Protocol"; Final Rule is incorporated by reference.

B. Construction Standards.

1. Section 29 CFR 1926.20 through the end of part 1926, of the July 1, 2002, edition is incorporated by reference.

2. FR Vol. 67, No. 177, Thursday, September 12, 2002, Pages 57722 to and including 57736, "Safety Standards for Signs, Signals, and Barricades; Final Rule" is incorporated by reference.

3. FR Vol. 69, No. 153, Tuesday, August 10, 2004, Pages 48754 to and including 48760, "Alberici Mid-Atlantic, LLC, Commonwealth Dynamics, Inc., and R and P Industrial Chimney Co. Inc., Application for Permanent Variance and Interim Order, Grant of Interim Order, and Request for Comments; Notice"; is incorporated by reference.

KEY: safety

[December 2, 2004]2005

Notice of Continuation November 25, 2002

34A-6



Natural Resources, Water Rights **R655-14** Administrative Procedures for Enforcement Proceedings Before the Division of Water Rights

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE No.: 28032

FILED: 06/15/2005, 18:39

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes procedures for water enforcement adjudicative proceedings as required by Section 73-2-25 of the Utah Water and Irrigation Code, which provides that the State Engineer, as the Director of the Utah Division of Water Rights, is authorized to make rules to implement the water rights enforcement powers and duties of the State Engineer and Division of Water Rights.

SUMMARY OF THE RULE OR CHANGE: This new rule will establish procedures for water enforcement adjudicative proceedings as required by Section 73-2-25 of the Utah Water and Irrigation Code.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 73-2-1, 73-2-1.2, 73-2-25 and 73-2-26

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The implementation of this rule will require \$52,000 for 0.5 FTE attorney from the Attorney General's Office and \$40,000 for 1 FTE Engineer for a total of \$92,000.

❖ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government because there are no local positions needed at this time for enforcement as this is a new program.

❖ **OTHER PERSONS:** No anticipated costs or savings to other persons because the Legislature placed the enforcement authority on the State Engineer and assistants from county prosecutors and the police will likely be nominal. Costs will be incurred by violators who are imposed fines and penalties by the State Engineer because Sections 73-2-25 and 73-2-26 authorize the State Engineer to impose fines and penalties upon violators.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Penalties or fines will only be imposed against those who are found to be illegally using water. Compliance costs may vary upon violation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no direct fiscal impacts on businesses. If a business unlawfully diverts and uses water, or other similar actions, they could be subject to a penalty and/or fine. The Legislation passed H.B. 29, H.B. 38, and H.B. 157 during the 2005 General Session and set forth the type and extent of the penalties and fines. This rule is intended to define the procedures of the State Engineer in enforcement of the law. Mike Styler, Executive Director (DAR NOTE: H.B. 29 is found at UT L 2005 Ch 165, and was effective 05/02/2005. H.B. 38 is found at UT L 2005 Ch 215, and was effective 05/02/2005. H.B. 157 is found at UT L 2005 Ch 33, and was effective 05/02/2005.)

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

NATURAL RESOURCES
WATER RIGHTS
Room 220
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Gail Nelson at the above address, by phone at 801-538-7370, by FAX at 801-538-7442, or by Internet E-mail at gailnelson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/01/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 08/02/2005

AUTHORIZED BY: Jerry Olds, Director

R655. Natural Resources, Water Rights.

R655-14. Administrative Procedures for Enforcement Proceedings Before the Division of Water Rights.

R655-14-1. Authority.

(1) These rules establish procedures for water enforcement adjudicative proceedings as required by Section 73-2-25 of the Utah Water and Irrigation Code, which authorizes the State Engineer, as the Director of the Utah Division of Water Rights, to make rules to implement the water enforcement powers and duties of the State Engineer and Division of Water Rights.

(2) The Division's powers and duties include acting on behalf of the State of Utah to administer, under the supervision of the State Engineer, the distribution and use of all surface and ground waters within the state in accordance with statutory authority, including but not limited to Sections 73-2-1, 73-2-1.2, and 73-2-25.

R655-14-2. Application and Preamble.

(1) These rules are applicable statewide to the use of the waters of the state. Additional rules may be promulgated to address water enforcement for specific hydrologic areas.

(2) The State Engineer, or his designated Presiding Officer, may issue an Initial Order for any violation of the Water and Irrigation Code as set forth in Sections 73-1-1 through 73-5a.

(3) Following the issuance of an Initial Order, the respondent may contest the Initial Order in a proceeding before the State Engineer or his appointed Presiding Officer. Water enforcement adjudicative proceedings are not governed by the Utah Administrative Procedures Act as provided under Section 63-46b-1 and are not governed by R655-6-1 through R655-6-20.

(4) These rules shall be liberally construed to permit the Division to effectuate the purposes of Utah law.

R655-14-3. Purpose.

(1) These rules are intended to:

(a) Assure the protection of Utah's water and the public welfare by promoting compliance and deterring noncompliance with the statutes, rules, regulations, permits, licenses and orders

administered and issued under the Division's authority by removing any economic benefit realized as a direct or indirect result of a violation; and

(b) Assure that the State Engineer assess administrative penalties lawfully, fairly, and consistently, which reflect:

(i) The nature and gravity of the violation and the potential for harm to Utah's water and the public welfare by the violation;

(ii) The length of time which the violation was repeated or continued; and

(iii) The additional costs which are actually expended by the Division during the course of the investigation and subsequent enforcement.

(c) Clarify the Division's authority to enforce the laws it administers under the State Engineer's supervision, and the rules, regulations, permits, and orders adopted pursuant to appropriate authority.

R655-14-4. Definitions.

(1) Terms used in this rule are defined in Sections 73-3-24.

(2) In addition,

(a) "Administrative Cost" means a monetary sum assessed by the Presiding Officer for any expense incurred by the Division in investigating and stopping a violation of, or a failure to comply with, a law administered by the Division, or any rule, permit, license, or order adopted pursuant to the Division's authority.

(b) "Administrative Penalty" or "Administrative Fine" means a monetary sum assessed by the Presiding Officer in response to a violation of, or a failure to comply with, a law administered by the Division, or any rule, regulation, license, permit or order adopted pursuant to the Division's authority. "Administrative Penalty" and "Administrative Fine" may be used interchangeably.

(c) "Cease and Desist Order" means a written order requiring a respondent to cease and desist his violations and/or directing that positive steps be taken to mitigate any harm or damage arising from the violation, including the imposition of administrative penalties and administrative costs. Cease and Desist Order's are further described in R655-14-11.

(d) "Consent Order" means an order reflecting the voluntary agreement between the parties concerning the resolution of the water enforcement adjudicative proceeding.

(e) "Default Order" means an order that is issued by a Presiding Officer after a respondent fails to respond to an IO within the designated time frame.

(f) "Distribution Order" means a written order from the State Engineer that includes any or all of the following:

(i) An interpretation of the water rights on a river system or other water source and procedures for the regulation and distribution of water according to those water rights;

(ii) A requirement of specific action or actions on the part of a water right owner or a group of water right owners to ensure that water is diverted, stored, or used according to the water rights involved and that the diversion, storage, or use does not infringe on the rights of other water right owners;

(iii) A description of the hydrologic limitations of a river system or other water source and a plan based on the water rights of record designed to manage and maximize beneficial use of water while protecting the sustainability of the water source;

(iv) A requirement that reports be submitted to the Division as provided in Section 73-5-8.

(g) "Division" means the Division of Water Rights. The terms State Engineer, Presiding Officer, or Division may be used

interchangeably unless clearly indicated otherwise by the context of the sentence in which it appears.

(h) "Filed" means submission of papers to the Division pursuant to R655-14-8(3).

(i) "Files" means information maintained in the Division files, which may include both paper and electronic information.

(j) "Final Judgment and Order" means final decision issued by the State Engineer on the whole or part of a water enforcement adjudicative proceeding. This definition includes "Default Orders."

(k) "Knowingly" as required by Section 73-2-26, means the definition contained in 76-2-103, which is: a person engages conduct knowingly, or with knowledge with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(l) "Issued" an IO and Final Judgment and Order are issued when deposited in the mail.

(m) "Initial Order" means a Notice of Violation and/or Cease and Desist Order.

(n) "License" means the express grant of permission or authority by the Division to carry on an activity or to perform an act, which, without such permission or authority, would otherwise be a violation of State law, rule or regulation.

(o) "Location" means the current, residential address of a party as recorded in the Division's files. If a current residential address is not available, "location" means an employment or business address if known, or nonresidential mailing address such as a Post Office Box or Rural Route, at which a party whose location information is being sought receives mail.

(p) "Mitigation" means to provide compensation acceptable to the Division for injury caused by the violation.

(q) "Mitigation Plan" means a document submitted to the Division by the respondent that identifies or proposes actions to provide mitigation.

(r) "Noncompliance" or "Nonconformance" or "Failure to Comply" or "Violation" each mean any act or failure to act which constitutes or results in:

(i) Engaging in any activity prohibited by, or not in compliance with, any law administered by the Division or any rule, license, permit or order adopted or granted pursuant to the Division's authority;

(ii) Engaging in any activity without a necessary permit or approval that is required by law or regulation;

(iii) The failure to perform, or the failure to perform in a timely fashion, anything required by a law administered by the Division or by a rule, license, permit or order adopted pursuant to the Division's authority.

(s) "Notice of Violation" means a written notice that informs a respondent of Water and Irrigation Code violations. Notice of Violation is further described in R655-14-11.

(t) "Participate" means, in an enforcement proceeding that was commenced by an IO, to:

(i) Present relevant information to the Presiding Officer within the time period described by statute or rule for requesting a hearing; and/or

(ii) Attend the hearing if a hearing is scheduled.

(u) "Party" means the Division, and/or the respondent.

(v) "Permit" means an authorization, license, or equivalent control document issued by the Division to implement the

requirements of any federally delegated program or Utah law administered or enforced by the Division.

(w) "Person" means an individual, trust, firm, joint stock company, corporation (including a quasi-governmental corporation), partnership, association, syndicate, municipality, municipal or state agency, fire district, club, non-profit agency or any subdivision, commission, department bureau, agency, department or political subdivision of State or Federal Government (including quasi-governmental corporation) or of any interstate body and any agent or employee thereof.

(x) "Presiding Officer" means the State Engineer, persons appointed by the State Engineer, or persons designated by the Division's rules, or statute, to conduct a water enforcement adjudicative proceeding. State Engineer, Presiding Officer, or Division may be used interchangeably unless clearly indicated otherwise by the context of the sentence in which it appears.

(y) "Record" means the official collection of all written and electronic materials in water enforcement adjudicative proceedings, including but not limited to the administrative action, pleadings, motions, exhibits, orders and testimony that took place during the proceeding.

(z) "Respondent" means any person against whom the Division commences an enforcement action by issuing an IO.

(aa) "Requirement" means any law administered by the Division, or any rule, regulation, permit, license or order adopted or granted pursuant to the Division's authority.

(ab) "State Engineer" is the Director of the Division of Water Rights appointed as provided by Sections 73-2-1 and 73-2-1.2. The terms State Engineer, Presiding Officer, or Division may be used interchangeably unless clearly indicated otherwise by the context of the sentence in which it appears.

(ac) "Unknowingly" means the converse of the definition contained in 76-2-103, which is: a person engages conduct unknowingly, or without knowledge with respect to his conduct or to circumstances surrounding his conduct when he is unaware of the nature of his conduct or the existing circumstances. A person acts unknowingly, or without knowledge, with respect to a result of his conduct when he is unaware that his conduct is reasonably certain to cause the result.

(ad) "Water Commissioner" means a person appointed to distribute water within a water distribution system pursuant to Section 73-5-1.

R655-14-5. Other Authorities.

(1) Nothing in these rules shall limit the Division's authority to take alternative or additional actions relating to the administration, appropriation, adjudication and distribution of the waters of Utah as provided by Utah law.

R655-14-6. Designation of Presiding Officers.

(1) The following persons may be designated Presiding Officers in adjudicative proceedings:

(a) Assistant State Engineers;

(b) Deputy State Engineers; or

(c) Other qualified persons designated by the State Engineer.

R655-14-7. Service of Notice and Orders.

(1) Notices, orders, written decisions, or any other documents for which service is required or permitted to be made by Section 73-2-25 shall be served upon the respondent at the respondent's location

using certified mail or methods described in Rule 5 of the Utah Rules of Civil Procedure.

R655-14-8. Computation of Time.

(1) Computation of any time period referred to in these rules shall begin with the first day following the act that initiates the running of the time period. The last day of the time period computed is included unless it is a Saturday, Sunday, or legal holiday or any other day on which the Division is closed, in which event the period shall run until the end of the business hours of the following business day. When the time period is less than seven (7) days, intervening days when the Division is closed shall be excluded in the computation.

(2) The State Engineer, for good cause shown, may extend any time limit contained in these rules, unless precluded by statute. All requests for extensions of time shall be made by motion before the expiration of the original or previously extended time period.

(3) Papers required or permitted to be filed under these rules shall be filed with the Division within the time limits for such filing as are set by the Division, the Presiding Officer, or other provision of law. Papers filed in the following manner shall be deemed filed as set forth:

(a) Papers hand delivered during regular business hours shall be deemed filed on the date of hand-delivery. Papers delivered by hand at times other than during regular business hours shall be deemed filed on the next regular business day when stamped by the Division.

(b) Papers deposited in the U.S. mail shall be deemed filed on the date stamped received by the Division. In the event that no stamp by the Division appears, papers shall be deemed filed on the postmarked date. All papers shall show the date received by the Division.

(c) Papers transmitted by facsimile, telecopier or other electronic transmission shall not be accepted for filing unless permitted in writing by the Presiding Officer.

R655-14-9. Filings Generally.

(1) Papers filed with the Division shall state the Division and file number, if any, the title of the proceeding, and the name of the respondent on whose behalf the filing is made.

(2) Papers filed with the Division shall be signed and dated by the respondent on whose behalf the filing is made or by the respondent's authorized representative. The signature constitutes certification that the respondent:

- (a) Read the document;
- (b) Knows the content thereof;
- (c) To the best of his knowledge, represents such statements are true;
- (d) Does not interpose the papers for delay; and
- (e) If his signature does not appear on the paper, authorized a representative with full power and authority to sign the paper.

(3) All papers, except those submittals and documents that are kept in a larger format during the ordinary course of a party's business, shall be submitted on an 8 1/2 x 11 inch paper. All papers shall be legibly hand printed or typewritten.

(4) The Division may provide forms to be used by the parties.

(5) The original of all papers shall be filed with the Division with such number of additional copies as the Division may reasonably require.

(6) Simultaneously with the filing of any and all papers with the Division, the party filing such papers shall send a copy to all

other parties, or their authorized representative to the proceedings, by hand delivery, or U.S. Mail, postage prepaid, properly addressed.

R655-14-10. Motions.

(1) A party may submit a request to the Presiding Officer for any order or action not inconsistent with Utah law or these rules. Such a request shall be called a motion. The types of motions made shall be those that are under these Rules and the Utah Rules of Civil Procedure.

(2) Motions may be made in writing at any time before or after the commencement of a hearing, or they may be made orally during a hearing. Each motion shall set forth the grounds for the desired order or action and state whether oral argument is requested. A written supporting memorandum, specifying the legal basis and support of the party's position shall accompany all motions.

R655-14-11. Options for Adjudicative Enforcement.

(1) The Presiding Officer may pursue any combination of the following administrative and judicial enforcement actions depending upon the circumstances and gravity of each case.

(a) Notice of Violation: a formal notice of a suspected violation issued in accordance with Section 73-2-25 which:

(i) Cites the law, rule, regulation, permit and/or order allegedly violated;

(ii) States the facts that form the basis for the Division's belief that a violation has occurred;

(iii) States the administrative penalty and cost, and/or other relief deemed appropriate by the Presiding Officer;

(iv) Specifies a reasonable deadline or deadlines by which the respondent:

(A) Shall come into compliance with the requirements described in the Notice of Violation, and/or

(B) Shall submit a written mitigation plan or proposal setting forth how and when that respondent proposes to achieve compliance.

(v) Informs the respondent:

(A) Of the right to file a timely written request for a hearing on either the alleged violation, administrative penalty and cost or remedy imposed, or both;

(B) That the respondent must file said written request for a hearing with Division within seven (7) days after service of the Notice of Violation;

(C) That said written request shall strictly comply with R655-14-15;

(D) That said notice shall become a Final Judgment and Order of the Division upon the respondent's election to waive or failure to respond or participate in a timely manner, and

(E) That the Presiding Officer may treat each day's violation as a separate violation under Section 73-2-26(1)(d); that is, the administrative penalty continues to accrue each day from the time the Notice of Violation is issued until compliance is achieved.

(vi) Identifies the individual to whom correspondence and inquiries regarding the Notice of Violation should be directed;

(vii) States to whom and the date by which the administrative penalty and cost shall be paid if the respondent elects to waive or fails to request an adjudicative hearing in a timely manner and elects to pay the penalty and cost; and

(viii) States the Division's authority to pursue further administrative or judicial enforcement action.

(b) Cease and Desist Order: an immediate compliance order issued pursuant to Section 73-2-25 either upon discovery of a

suspected violation of the Water and Irrigation Code or in combination with a Notice of Violation, which:

(i) Cites the law, rule, license, permit and/or order allegedly violated;

(ii) Describes the act or course of conduct which is prohibited by the Cease and Desist Order;

(iii) Orders the respondent to immediately cease the prohibited act or prohibited course of conduct;

(iv) States the mitigation action deemed necessary by the State Engineer;

(v) Takes effect immediately upon issuance or within such time as specified by the State Engineer in the CEASE AND DESIST ORDER; and

(vi) States the remedies, costs and penalties that the State Engineer may lawfully impose for any violation of the Cease and Desist Order.

(c) Court Action

(i) Civil: direct recourse to a court of competent jurisdiction either in addition to or in lieu of administrative action where:

(a) It is necessary to enforce a Final Judgment and Order and seek civil and/or administrative penalties

(b) An imminent threat to the public health, safety, welfare or environment exists which warrants injunctive or other emergency relief; or

(c) A pattern of continuous, significant violations exists such that administrative enforcement action alone is unlikely to achieve compliance; or

(d) The court is the most convenient or appropriate forum for resolution of the dispute.

(ii) Criminal: referral to the County Prosecutor or the Attorney General's Office for prosecution or criminal investigation where:

(a) The alleged act or failure to act may be defined as a criminal offense by State law;

(b) Enforcement is beyond the jurisdiction or investigative capability of the Division; or

(c) Criminal sanctions may be appropriate.

(d) Miscellaneous - other enforcement options may be pursued to achieve compliance. Additional options include, but are not limited to

(i) Joint actions with or referrals to other federal, state or local agencies;

(ii) Direct legal or equitable actions in state or federal court; and/or

(iii) Denial, suspension or revocation of state grants or required permits or certifications.

(2) Unless otherwise stated, all enforcement actions are effective upon issuance.

(3) Combinations of enforcement actions are not mutually exclusive and may be concurrent and/or cumulative.

(4) All IOs shall become final if not contested within 14 days after the date issued.

(5) The date of issuance of an IO is the date the IO is mailed.

(6) Failure to timely contest an IO waives any right of reconsideration or judicial appeal.

R655-14-12. Assessment of Administrative Penalties and Administrative Costs.

(1) Pursuant to Sections 73-2-1, 73-2-25, and 26, and these rules, the Presiding Officer, may assess administrative penalties and administrative costs for any violation of the Water and Irrigation

Code as set forth in Sections 73-1-1 through 73-5a et seq. Such penalties and costs may be assessed either before or after a hearing.

(2) No penalty shall exceed the maximum penalty allowed by State law for the violation(s). The maximum administrative penalty that the Presiding Officer has authority to impose is determined by reference to the civil penalty provision of Section 73-2-26(1) as may be amended.

(3) Each day which the violation is repeated, continued or remains in place, constitutes a separate violation. The Presiding Officer may assess an administrative penalty, not to exceed five thousand dollars (\$5,000) for each knowing violation or one thousand dollars (\$1,000) for each unknowing violation.

(4) The penalty imposed shall begin on the first day the violation occurred, and continues to accrue through and including the day the Notice of Violation, Cease and Desist Order, or Final Judgment and Order is issued until compliance is achieved.

(5) The amount of the penalty shall be calculated based on:

(a) The value or quantity of water unlawfully taken, including the cost or difficulty of replacing the water;

(b) The gravity of the violation, including the economic injury or impact to others;

(c) Whether the respondent subject to fine or replacement attempted to comply with the State Engineer's orders; and

(d) The respondent's economic benefit from the violation.

(6) Administrative costs, interest, late payment charges, costs of compliance inspections, and collection costs may be assessed in addition to the administrative penalty. These include:

(a) Administrative costs: Time spent by water enforcement staff, supervisors and the Attorney General's Office, at the full cost of the each employee's hourly rate, including salary, benefits, overhead and other directly related costs.

(b) Late payment charges: due at the monthly percentage rate assessed by the Utah Division of Finance, Office of Debt Collections.

(c) Compliance inspections: based on staff time at the full cost of the hourly rate, including salary, benefits, overhead and other directly related costs.

(d) Collection costs: actual collection costs.

(7) The Division may report the total amount of administrative fines and/or administrative costs assessed to consumer reporting agencies and pursue collection as provided by Utah law.

(8) Any monies collected under Section 73-2-26 and these rules shall be deposited into the General Fund.

R655-14-13. Replacement and Mitigation.

(1) In addition to administrative fines and costs, the Presiding Officer, in accordance with Section 73-2-1, 73-2-25 and 73-2-26 and these rules, may order the respondent to mitigate damages caused by the violation and/or replace up to 200 percent of the water unlawfully taken.

(2) The Presiding Officer may require actual replacement of water after:

(a) a respondent fails to request judicial review of a final order issued under Section 73-2-25; or

(b) the completion of judicial review, including any appeals.

(3) Pursuant to Section 73-2-26, the Presiding Officer shall consider, before ordering replacement of water, the following factors:

(a) The value or quantity of water unlawfully taken, including the cost or difficulty of replacing the water;

(b) The gravity of the violation, including the economic injury or impact to others;

(c) Whether the respondent attempted to comply with the State Engineer's orders; and

(d) The respondent's economic benefit from the violation.

(4) The Presiding Officer may order the respondent to submit a mitigation plan to replace groundwater or surface water, which shall be submitted in writing and contain the following information:

(a) The name and mailing address of the respondent or persons submitting the plan;

(b) The case number the Division assigned to the IO which is the basis of the mitigation plan;

(c) Identification of the water rights or property for which the mitigation plan is proposed;

(d) A description of the mitigation plan; and

(e) Any information that assists the State Engineer in evaluating whether the proposed mitigation plan is acceptable.

(5) If the mitigation plan is submitted for the purpose of replacing water, the factors the State Engineer may consider to determine if the plan is acceptable include, but are not limited to:

(a) Whether the mitigation plan provides for the respondent to forgo use of a vested water right owned or leased by him until water is replaced to the Presiding Officer's satisfaction;

(b) The reliability of the source of replacement water over the term in which it is proposed to be used under the mitigation plan; and

(c) Whether the mitigation plan provides for monitoring and adjustment as necessary to protect vested water rights.

(6) As provided in Section 73-2-26, water replaced shall be taken from water that the respondent subject to the order requiring replacement would be entitled to use during the replacement period.

(7) In accordance with Section 73-2-26(5)(a), or any other statutory authority, the Division shall record any order requiring water replacement in the office of the county recorder where the place of use or water right is located. Any subsequent transferee of such property shall be responsible for complying with the requirements of said order.

(8) If the mitigation plan is submitted for the purpose of restoring a natural stream channel altered in violation of Section 73-3-29, the factors the State Engineer may consider to determine if the plan is sufficient include, but are not limited to:

(a) Whether the mitigation plan provides for reasonable means of replacing natural vegetation injured by the unlawful stream channel alteration;

(b) Whether the mitigation plan provides for a reasonable means to restore the bed and bank of the natural stream channel to its condition prior to the alteration;

(c) Whether the mitigation plan will not impair vested water rights;

(d) Whether the mitigation plan unreasonably or unnecessarily affects any recreation use or the natural stream environment;

(e) Whether the mitigation plan unreasonably or unnecessarily endangers aquatic wildlife;

(f) Whether the mitigation plan unreasonably or unnecessarily diminishes the natural channel's ability to conduct high flows; and

(g) Whether the mitigation plan uses generally accepted and appropriate engineering methods.

R655-14-14. Procedures for Commencing an Adjudicative Enforcement Action.

(1) The procedures for water enforcement adjudicative proceedings are as follows:

(a) In proceedings initiated by a IO, the Presiding Officer shall issue a default order unless the respondent does one of the following within fourteen (14) days in response to service of the notice:

(i) Ceases the violation and pays the administrative penalty and cost in full; or

(ii) Files with the Division a proper written response within the fourteen (14) day time period but waives a hearing and submits its case upon the record. Submission of a case without a hearing does not relieve the respondent from the necessity of providing the facts supporting his burdens, allegations or defenses; or

(iii) Files with the Division a proper written response and requests a hearing as provided in R655-14-15.

(b) Within a reasonable time after the close of a water enforcement adjudicative proceeding, the Presiding Officer shall issue a written and signed Final Judgment and Order, including but not limited to:

(i) Statement of law and jurisdiction;

(ii) Statement of facts;

(iii) Explanation of the Violation(s);

(iv) Order;

(v) A notice of the option to request reconsideration and the right to petition for judicial review;

(vi) The time limits for requesting reconsideration or filing a petition for judicial review; and

(vii) Other information the State Engineer deems appropriate.

(c) The Presiding Officer's Final Judgment and Order shall be based on the facts appearing in the Division's files and/or on the facts presented in evidence at any hearings or other adjudicative proceedings.

(d) A copy of the Presiding Officer's Final Judgment and Order shall be promptly mailed to each of the parties.

R655-14-15. Request for Hearing.

(1) Regardless of any other provision of the general laws to the contrary, all requests for a hearing shall be in writing and shall be filed with the Division within seven (7) calendar days of the IO's issuance.

(2) The request for a hearing shall state clearly and concisely the specific issues that are in dispute, the supporting facts, the relief sought, the permit or order involved, and any additional information required by applicable statutes and rules.

(3) The Presiding Officer may, upon his own initiative or upon the motion of any party, order any party to file a response or other pleading, and further permit either party to amend its pleadings in a manner just to all parties.

(4) The Presiding Officer may, if he determines a hearing is warranted, give at least three (3) days notice of the date, time and place for the hearing. The Presiding Officer may grant requests for continuances for good cause shown.

(5) The respondent may, by motion, request that a hearing be held at some place other than that designated by the Presiding Officer, due to disability or infirmity of any party or witness, or where justice and equity would be best served.

R655-14-16. General Requirements for Hearings.

(1) A hearing before a Presiding Officer is permitted in a water enforcement adjudicative proceeding if:

(a) The proceeding was commenced by an IO;
(b) The respondent files a request for hearing that meets the requirements of R655-14-15; and

(c) The respondent raises a genuine issue of material fact.

(2) No genuine issue of material fact exists if:

(a) The evidence gathered by the Division and the evidence the respondent offered to the Presiding Officer are sufficient to establish the violation of the respondent under applicable law; and

(b) No other evidence presented by the respondent conflicts with the evidence the Presiding Officer relied on when issuing an order.

(3) The Presiding Officer may make a decision without holding a hearing if:

(a) Presentation of testimony or oral argument would not advance the Presiding Officer's understanding of the issues involved;

(b) Delay would cause serious injury to the public health and welfare;

(c) Disposition without a hearing would best serve the public interest.

(4) If no hearing is held, the Presiding Officer may rely upon evidence in the record, including but not limited to:

(a) Water commissioner reports or information from governmental sources;

(b) Affidavit(s) documenting the respondent's violation;

(c) Failure of the respondent to produce upon request of the Presiding Officer records documenting the respondent's water use, diversions, or stream alteration; or

(d) Other applicable documentation.

(5) A party at any time may withdraw his request for a hearing, but the withdrawal shall be filed with the Division, in writing, signed by the respondent or his authorized representative, and deemed final.

R655-14-17. Preliminary Conference.

(1) The Presiding Officer may require the parties to appear for a preliminary conference prior to the scheduled commencement of the hearing or before issuing a Final Judgment and Order to consider:

(a) The simplification or clarification of the issues;

(b) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which shall avoid unnecessary proof;

(c) The limitation of the number of witnesses or avoidance of similar cumulative evidence, if the case is to be heard;

(d) The possibility of agreement disposing of all or any of the issues in dispute; and

(e) Such other matters as may aid in the disposition of the adjudicative enforcement proceeding.

(2) At the initial preliminary conference prior to the hearing, all parties shall prepare and exchange the following information:

(a) Names and addresses of prospective witnesses including proposed areas of expertise for expert witnesses;

(b) A brief summary of proposed testimony;

(c) A time estimate of each witness' direct testimony;

(d) Curricula vitae (resumes) of all prospective expert witnesses.

(3) The scheduling of a preliminary conference shall be solely within the discretion of the Presiding Officer.

(4) The Presiding Officer shall give the respondent at least three (3) days notice of the preliminary conference.

(5) The notice shall include the date, time and place of the preliminary conference.

R655-14-18. Telephonic or Electronic Hearings and Preliminary Conferences.

(1) The Presiding Officer may conduct hearings or preliminary conferences by telephone or other reliable electronic technology.

R655-14-19. Procedures and Standards for Orders Resulting from Service of a Initial Order.

(1) If the respondent agrees with the IO, he may enter into a Consent Order by stipulating to the facts, administrative penalties, and administrative costs. A stipulation, judgment, and Consent Order based on that stipulation, shall be prepared by the Division for the respondent's signature. Consent Orders are not subject to reconsideration or judicial review.

(2) If the respondent participates by attending a preliminary conference or otherwise presents relevant information to the Presiding Officer, but does not reach an agreement with the Division or is unavailable to sign a stipulation within 30 days after responding to the IO, and does not request a hearing, the Presiding Officer shall issue a Final Judgment and Order based on that participation.

(3) If the respondent requests a hearing, participates by attending a preliminary conference, and participates by attending the hearing, the Presiding Officer who conducts the hearing shall issue a Final Judgment and Order based upon the record.

(4) The Presiding Officer may issue a Default Order if the respondent fails to participate as follows:

(a) The respondent does not timely request a hearing or fails to respond to the IO;

(b) After proper notice the respondent fails to attend a preliminary conference scheduled by the Presiding Officer to consider matters which may aid in the disposition of the action; or

(c) After proper notice the respondent fails to attend a hearing scheduled by the Presiding Officer pursuant to a written request for a hearing.

(5) If a respondent's request for a hearing is denied under R655-14-16, the Presiding Officer shall issue a Final Judgment and Order based upon the information in the case record.

R655-14-20. Conduct of Hearings.

(1) Hearings shall be conducted informally as circumstances require.

(2) All parties, authorized representatives, witnesses and other persons present at the hearing shall conduct themselves in a manner consistent with the standards and decorum commonly observed in Utah courts. Where such decorum is not observed, the Presiding Officer may take appropriate action including adjournment, if necessary.

(3) The Presiding Officer shall conduct the hearing, make all decisions regarding admission or exclusion of evidence or any other procedural matters, and have an oath or affirmation administered to all witnesses.

(4) The Presiding Officer, based upon the IO, objections thereto, if any, and the evidence adduced at the hearing, shall determine the responsibility and administrative penalty and cost, if any, of the respondent under Sections 73-2-25 and 26. Following determination of responsibility and penalty and cost, the Presiding Officer shall determine the acceptable periodic payment or

alternative means of satisfaction of any violation amount, which shall be included in the Final Judgment and Order.

R655-14-21. Rules of Evidence in Hearings.

(1) Discovery is prohibited, but the Division may issue subpoenas or other orders to compel production of necessary evidence.

(2) A party may call witnesses and present oral, documentary, and other evidence.

(3) A party may comment on the issues and conduct cross-examination of any witness as may be required for a full and true disclosure of all facts relevant to any issue designated for hearing, and as may affect the disposition of any interest which permits the person participating to be a party.

(4) A witness' testimony shall be under oath or affirmation.

(5) Any evidence may be presented by affidavit rather than by oral testimony, subject to the right of any party to call and examine or cross-examine the affiant.

(6) Relevant evidence shall be admitted.

(7) The Presiding Officer's decision may not be based solely on hearsay.

(8) Official notice may be taken of all facts of which judicial notice may be taken in Utah courts.

(9) All parties shall have access to public information contained in the Division's files and to all materials and information gathered in the investigation, to the extent permitted by law.

(10) No evidence shall be admitted after completion of a hearing or after a case submitted on the record, unless otherwise ordered by the Presiding Officer.

(11) Intervention is prohibited.

(12) A respondent appearing before the Presiding Officer for the purpose of a hearing may be represented by a licensed attorney. A representative from the Division shall present before a Presiding Officer the Division's supporting evidence for its claim. At the State Engineer's discretion, a representative from the office of the Attorney General may present the Division's supporting evidence.

R655-14-22. Transcript of Hearing.

(1) Testimony and argument at the hearing shall be either recorded electronically or stenographically. The Division shall make electronic recordings available to any party, upon written request. The Division is not responsible to supply any party with a transcript of the hearing.

(2) Corrections in the official transcript may be made only to conform it to the evidence presented at the hearing. Transcript corrections, agreed to by opposing parties, may be incorporated into the record, if and when approved by the Presiding Officer, at any time during the hearing, or after the close of evidence. The Presiding Officer may call for the submission of proposed corrections and may determine the disposition thereof at appropriate times during the course of the proceeding.

R655-14-23. Consent Order.

(1) At any time prior to rendering a Final Judgment and Order, the parties may attempt to settle a dispute by stipulating to a Consent Order.

(2) Every Consent Order shall contain, in addition to an appropriate order:

(a) An admission of facts;

(b) A waiver of further procedural steps before the Presiding Officer and the right to judicial review; and

(c) A statement that the stipulation is enforceable as an order of the State Engineer and Division in accordance with procedures prescribed by law.

(3) The Consent Order may contain a statement that signing the Consent Order is for settlement purposes only and does not constitute an admission by any party that the law or rules have been violated as alleged in the IO.

R655-14-24. Reconsideration.

(1) Within 14 days after the Presiding Officer issues a Final Judgment and Order, any party may file a written request for reconsideration with the Division, stating the specific grounds upon which relief is requested.

(2) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(3) The request for reconsideration shall be filed with the Division and one copy shall be mailed to each party by the person making the request.

(4) The Presiding Officer shall issue a written order granting the request or denying the request.

(5) If the Presiding Officer does not issue an order within 14 days after the filing of the request, the request for reconsideration shall be considered denied.

R655-14-25. Setting Aside Final Judgment and Orders.

(1) On the motion of any party, the Presiding Officer may set aside a Final Judgment and Order including:

(a) The respondent was not properly served with an IO;

(b) The order has been replaced by a judicial order that covers the same violation and time period;

(c) A rule or policy was not followed when the Final Judgment and Order was issued;

(d) Mistake, inadvertence, excusable neglect;

(e) Newly discovered evidence which by due diligence could not have been discovered before the Presiding officer issued the Final Judgment and Order; or

(f) Fraud, misrepresentation or other misconduct of an adverse party;

(2) The motion shall be made not more than 3 months after the Final Judgment and Order was issued.

(3) The Division shall notify the respondent of the Presiding Officer's intent to set the order aside by serving the respondent with a notice.

(4) If after serving the respondent with a notice, the Presiding Officer determines the order shall be set aside, the Division shall notify the respondent.

R655-14-26. Amending Administrative Orders.

(1) The Presiding Officer may amend an IO or Final Judgment and Order for reasons including but not limited to the following:

(a) A clerical mistake was made in the preparation of the order;

or
(b) The time periods covered in the order overlap the time periods in another order for the same participants.

(2) The Division shall notify the respondent of the Presiding Officer's intent to amend the order by serving the respondent with a notice.

(3) If the respondent is served with notice, the Presiding Officer determines that the order shall be amended, the Division shall provide a copy of the amended order to the respondent.

R655-14-27. Disqualification of Presiding Officers.

(1) A Presiding Officer shall disqualify himself from performing the functions of the Presiding Officer regarding any matter in which he, his 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 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 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.

(2) A Presiding Officer is also subject to disqualification under principles of due process and administrative law.

(3) These requirements are in addition to any requirements under the Utah Public Officers' and Employees' Ethics Act, Utah Code Ann. Section 67-16-1 et seq.

(4) A motion for disqualification shall be made first to the Presiding Officer. If the Presiding Officer is appointed, any determination of the Presiding Officer upon a motion for disqualification may be appealed to the State Engineer.

R655-14-28. Judicial Review.

(1) Pursuant to 73-2-25, a Final Judgment and Order may be reviewed by trial de novo by the district court:

(a) In Salt Lake County;

(b) Or the county where the violation occurred.

(2) A respondent shall file a petition for judicial review of the Final Judgment and Order within 20 days from the day on which the order was served on that respondent.

(3) The Division may grant a stay of its order or other temporary remedy during the pendency of the judicial review on its own motion, or upon the motion of a party.

KEY: water rights, enforcement, fines

2005

73-3



Transportation, Program Development
R926-7
Scenic Byways

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE No.: 28024

FILED: 06/13/2005, 14:06

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule implements Section 72-4-303 that created a committee to designate scenic byways and establish procedures for doing so.

SUMMARY OF THE RULE OR CHANGE: This rule establishes procedures to administer the scenic byway program in the State of Utah by establishing the criteria a highway shall possess to be designated as a scenic byway; establishing the process for nominating a highway to be designated as a state scenic byway; specifying the process for hearings to be conducted prior to a highway being designated a scenic byway; identifying highways within the state as scenic byways; and establishing the process and criteria for removing the scenic byway designation from all or part of a highway.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-4-303

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There may be some cost to the state from creating the committee, i.e., per diem. Also, the state may have some cost from installing signs. Costs should not be high, however, because the scenic byway program has been in existence before but did not require rulemaking. It is impossible to say how much the cost will be since the committees are new.

❖ LOCAL GOVERNMENTS: The local governments will also have some costs from convening their own committees and attending UDOT's. On local roads that are designated byways, local governments may have costs for installation of signs. It is unknown how much this rule will cost, if anything, because the committees are new and we do not know how the local governments will set them up.

❖ OTHER PERSONS: No other persons are affected by this rule and, therefore, they should not have any costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The costs are minimal and have been ongoing since the program has been in existence but did not previously require rulemaking

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The costs to this program are minimal and are required by state law. John R. Njord, Executive Director

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

TRANSPORTATION
PROGRAM DEVELOPMENT
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY UT 84119-5998, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at jbeadles@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/01/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 08/02/2005

AUTHORIZED BY: John R. Njord, Executive Director

R926. Transportation, Program Development.

R926-7. Scenic Byways.

R926-7-1. Authority.

This rule establishes the procedures for administration of the scenic byway program; establish the criteria that a highway shall possess to be designated as a scenic byway; establish the process for nominating a highway to be designated as a state scenic byway; specifying the process for hearings to be conducted in the area of proposed designation prior to the highway being designated as a scenic byway; identifying the highways within the state as scenic byways; and establish the process and criteria for removing the designation of a highway as a scenic byway as required by Utah Code Ann. Section 72-4-303.2.

R926-7-2. Definitions.

(1) "Committee" means the Utah State Scenic Byway Committee as defined in Utah Code Ann. Section 72-4-301.

(2) "De-designation" means removing a current state scenic byway designation from an entire existing scenic byway.

(3) "Department" means the Utah Department of Transportation.

(4) "Governmental Body" means the elected governing board of a political subdivision, such as town, city, county or Association of Governments.

(5) "Local Scenic Byway Committee" means the committee consisting of the Road Leader, and representatives from nearby governmental bodies, agencies, tourism related groups and interested individuals which recommend and prioritize various projects and applications relating to a scenic byway. The Local Scenic Byway Committee promotes and preserves intrinsic values along the byway.

(6) "Quorum" has the meaning given in Utah Code Ann. Section 72-4-302.

(7) "Road Leader" means an individual recognized by the Local Scenic Byway Committee as chair. If a Local Scenic Byway Committee does not exist for a scenic byway, the Road Leader is an individual recognized by the Committee chair as the person to contact for applications and other administrative business for the state scenic byway.

(8) "Segmentation" means removing the state scenic byway designation from a portion of an existing scenic byway.

R926-7-3. Committee Administration.

(1) The committee shall meet annually, and as frequently as needed to conduct business to administer the State Scenic Byway program within the State of Utah. This business shall include, but not be limited to designating, de-designating and segmentation of state scenic byways; recommending applications recognizing National and All American Road recognition; prioritizing applications for Scenic Byway Discretionary funding, and other funding which may be available; and other business as may be needed to administer the scenic byway program.

(2) Committee membership shall be as required by Utah Code Annotated Section 72-4-303.2.

(3) The committee member's term of service shall be as follows:

(a) Representatives of State Agencies. Term of service will be indefinite, as determined by the identified agency.

(b) Representatives of Federal Agencies. Term of service will be indefinite, as determined by the identified agency.

(c) Utah Association of Governments. Term of service will be indefinite, as determined by the identified organization.

(d) Representatives of the Utah Travel Regions Associations, local government tourism representative, and the private sector representative. Term will be four years.

(4) Half of the initial appointments will be for two years, in order to stagger the terms. The members selected for the initial two year term will be selected by the state agencies.

(5) The Committee will meet annually in the second quarter of the calendar year. Additional Committee meetings may be called to conduct business necessary to administer the State Scenic Byway program.

(6) A poll by telephone or email may be taken of all members for the purpose of approving applications submitted for National Scenic Byway or All American Road recognition. All Committee members will be furnished poll results. A second poll will then be taken of the voting Committee members concerning submitting the applications, with the results determining if the application will be submitted. The results will be forwarded to all committee members, and reported at the next Committee meeting.

(7) A poll by telephone or email may be taken of all members for the purpose of prioritizing funding grant applications submitted for Scenic Byway Discretionary funds. All Committee members will be furnished poll results. A second poll will then be taken of the voting Committee members concerning prioritizing the applications, with the results determining priorities of the applications to be submitted. The results will be forwarded to all committee members, and reported at the next Committee meeting.

R926-7-4. Criteria That A Highway Shall Have To Be Designated As A Scenic Byway.

(1) A road being considered for state scenic byway designation must comply with all of the following criteria:

(a) The nominated road must possess unusual, exceptional, or distinctive intrinsic qualities in at least two of the following categories:

(i) Scenic Quality. Scenic Quality is the heightened visual experience derived from the view of natural and manmade elements of the visual environment of the scenic byway corridor. The characteristics of the landscape are strikingly distinct and offer a pleasing and most memorable visual experience. All elements of the landscape-landform, water, vegetation, and manmade development-contribute to the quality of the corridor's visual environment. Everything present is in harmony and shares in the intrinsic qualities.

(ii) Natural Quality. Natural Quality applies to those features in the visual environment that are in a relatively undisturbed state. These features predate the arrival of human populations and may include geological formations, fossils, landform, water bodies, vegetation, and wildlife. There may be evidence of human activity, but the natural features reveal minimal disturbances.

(iii) Historic Quality. Historic Quality encompasses legacies of the past that are distinctly associated with physical elements of the landscape, whether natural or manmade, that are of such historic significance that they educate the viewer and stir an appreciation for the past. The historic elements reflect the actions of people and may include buildings, settlement patterns, and other examples of human

activity. Historic features can be inventoried, mapped, and interpreted. They possess integrity of location, design, setting, material, workmanship, feeling, and association.

(iv) Cultural Quality. Cultural Quality is evidence and expressions of the customs or traditions of a distinct group of people that are still currently practiced. Cultural features include but are not limited to crafts, music, dance, rituals, festivals, speech, food, special events, and vernacular architecture.

(v) Archeological Quality. Archaeological Quality involves those characteristics of the byway corridor that are physical evidence of historic or prehistoric human life or activity that are visible and capable of being inventoried and interpreted. The byway corridor's archeological interest, as identified through ruins, artifacts, structural remains, and other physical evidence have scientific significance that educate the viewer and stir an appreciation for the past.

(vi) Recreational Quality. Recreational Quality involves outdoor recreational activities directly associated with and dependent upon the natural and cultural elements of the corridor's landscape. The recreational activities provide opportunities for active and passive recreational experiences. They include but are not limited to downhill skiing, rafting, boating, fishing, and hiking. The recreational activities may be seasonal, but the quality and importance of the recreational activities as seasonal operations must be well recognized.

(vii) The nominated road must be a planned or existing route. In the case of a planned route, legal public access, safety standards and pavement must be guaranteed at completion of construction.

(viii) American Association of State Highway and Transportation Officials (AASHTO) safety standards for federal aid primary or secondary roads or highways will guide evaluation of road safety.

(ix) The nominated road must have strong local support and the proponents must demonstrate this support and coordination.

(x) The nominated road must accommodate recreational vehicles or provisions should be made for travel by recreational vehicles.

(xi) The nominated road need not lead to or provide connection to other road networks. It may be dead-ended, or provide only a single outlet for traffic.

(xii) The nominated road need not be open during the winter months. Seasonal road closures shall be clearly posted.

(xiii) The nominated road may include portions of the Interstate Highway System (xiv) only if the IHS component is a small part of the overall nominated scenic byway and is included primarily for continuity of travel.

R926-7-5. Process For Nominating A Highway To Be Designated A Scenic Byway.

(1) It is the intent of this criteria to be restrictive in nature so as to limit the number of designated state scenic byways in order to maintain the quality and integrity of the Scenic Byway system.

(2) Responsibility for state scenic byway designation shall be that of the Committee.

(3) Nominations shall be forwarded by a local governmental body, such as a town, city, county, or Association of Government.

(4) Nomination application will demonstrate the nominated road meets the criteria to be qualify as a state scenic byway.

(5) The committee will act on a byway related application only after public hearings have been held and after receiving minutes which include names and addresses of people making comments: a

detailed summary of comments made; and proof of public notification have been received.

(6) The nomination will be considered by the Committee after a presentation by the nominating sponsor group, either at the byway location, or at a Committee meeting. The Committee will vote on proposed designations at the next Committee meeting. Results will be reported to the nomination sponsor.

R926-7-6. Process For Hearings To Be Conducted In The Area Of Proposed Designation Prior To The Highway Being Designated As A Scenic Byway.

(1) The required public hearings may be held separately, or as an identifiable agenda item of a regular meeting of a governmental body.

(2) Notice of Local Public Hearing. The following is the minimum required public notification of the hearing to be held in conjunction with a proposed change of the status of a scenic byway:

(a) Written notice sent by US Mail to each of the following at least seven (7) days prior to the hearing:

(i) Local scenic byway Road Leader, as identified by the Committee chair;

(ii) Potentially impacted local governments, communities or counties in the area;

(iii) The Association of Governments that serves the impacted area.

(iv) The hearing shall be advertised in locally published newspapers a minimum of seven (7) days, but not more than fourteen (14) days prior to the hearing. If there are no local newspapers in the area, applicants must post notice of the public hearing for the same period in public places throughout the impacted area. Locations of such postings are to be furnished to the committee with the submitted application.

(v) Committee shall be invited to attend the public hearings.

(vi) Topics to be presented at Public Hearings: At a minimum, the following topics are to be presented at each public hearing.

(vii) The impact on outdoor advertising.

(viii) The potential impact of traffic volumes.

(ix) Potential impact of land use along byway.

R926-7-7. Highways Within The State Designated As Scenic Byways.

(1) The following roads are designated as state scenic byways:

(a) Logan Canyon Scenic Byway. US-89, beginning at 1500 East in Logan and running to the Utah/Idaho State Line.

(b) Bear Lake Scenic Byway. State Route 30, beginning at US-89, and running to East Shore Road in Laketown.

(c) Ogden River Scenic Byway. State Route 39, beginning at Valley Drive, near the mouth of Ogden Canyon, and running to the eastern Wasatch-Cache Forest boundary near highway Reference Post 48; and State Route 158 from SR-39, and running to County Road 3468; and the County Road 3468, from SR-158, running to SR-39.

(d) Big Cottonwood Canyon Scenic Byway. State Route 190, beginning at SR-210, and running to the end of the Brighton Loop.

(e) Little Cottonwood Canyon Scenic Byway. State Route 210, beginning at SR-209, and running to the end of state maintenance, near Alta.

(f) Provo Canyon Scenic Byway. US-189, beginning at SR-52, and running to SR-113, near Charleston; and SR-113, from US-189 running to US-40 in Heber City.

(g) Mirror Lake Scenic Byway. State Route 150, beginning at SR-32 in Kamas, and running to the Utah/Wyoming State Line.

(h) Flaming Gorge-Uintas Scenic Byway. US-191, beginning at US-40 in Vernal, and running to the Utah/Wyoming State Line; State Route 44, from US-191, running to SR-43 in Manila; and SR-43, from SR-44, running to the Utah/Wyoming state line.

(i) Indian Canyon Scenic Byway. US-191, beginning at US-6 near Helper, and running to US-40 in Duchesne.

(j) The Energy Loop, Huntington and Eccles Canyons Scenic Byway. State Route 31, beginning at US-89 in Fairview, and running to SR-10 in Huntington; and State Route 264, from SR-31, running to SR-96; and SR-96, from SR-264, and running to US-6 near Colton.

(k) Nebo Loop Scenic Byway. State Route 115, beginning at I-15 and running to SR-198; State Route 198, from SR-115 running to 600 East in Payson; and along County Road 2822 (600 East) and National Forest Road 015 running to SR-132 in Juab County.

(l) Upper Colorado River Scenic Byway. State Route 128, beginning at US-191 near Moab, and running to I-70 West Cisco interchange.

(m) Potash-Lower Colorado River Scenic Byway. State Route 279, beginning at the end of SR-279 near the Potash Plant and running to US-191.

(n) Indian Creek Scenic Byway. State Route 211, beginning at US-191 and running to County Road 2432; and County Road 2432 from SR-211 running to the Canyonlands National Park Visitor Center.

(o) Bicentennial-Trail of The Ancients Scenic Byway. State Route 95, beginning at SR-24, and running to US-191; State Route 275, from US-95 and running to Natural Bridges National Monument; and US-191 from Center Street in Blanding running to SR-162; and SR-162 from US-191 running to the Utah/Colorado state line.

(p) Monument Valley to Bluff Scenic Byway. US-163, beginning at the Utah/Arizona State Line running to US-191; and US-191 from US-163 running to the Cottonwood Wash Bridge in Bluff.

(q) Capitol Reef Country Scenic Byway. State Route 24, beginning at SR-72 in Loa, and running to SR-95 in Hanksville.

(r) Highway 12, A Journey Through Time Scenic Byway. State Route 12, beginning at US-89 near Panguitch, and running to SR-24 near Torrey.

(s) Markaquant High Plateau Scenic Byway. State Route 14, beginning at SR-130 and running to US-89.

(t) Cedar Breaks Scenic Byway. State Route 148, beginning at SR-14, through Cedar Breaks National Monument, running to SR-143.

(u) Brian Head-Panguitch Lake Scenic Byway. State Route 143, beginning at I-15 South Parowan Interchange, and running to US-89 in Panguitch.

(v) Beaver Canyon Scenic Byway. State Route 153, beginning at SR-160 in Beaver, and running to the end of pavement near Elk Meadows.

(w) Mt. Carmel Scenic Byway. US-89, beginning at the Kanab north city limit (approximately Highway Reference Post 65), and running to SR-12.

(x) Zion Park Scenic Byway. State Route 9, beginning I-15 and running to US-89.

(y) Kolob Fingers Road Scenic Byway. The National Park Service Road, beginning at I-15, and running to the Kolob Canyon Overlook.

(z) Dead Horse Point Mesa Scenic Byway. State Route 313, from US-191 running to Dead Horse Point State Park; and the Island in the Sky Road, from SR-313 running to Grandview Point.

(aa) Fish Lake Scenic Byway. State Route 25 and County Roads 2554 and 3268, beginning at SR-24, and running to SR-72.

(bb) Dinosaur Diamond Scenic Byway. Interstate 70, from the Colorado State Line running to Cisco Exit 214; the County Road 1714 through Cisco, from I-70 running to SR-128; SR-128, from the Cisco Road running to US-191 near Moab; US-191, from SR-128 running to I-70 at Crescent Junction; I-70, from US-191 at Crescent Junction running to US-6 near Green River; US-6, from I-70 running to US-191 near Helper; US-191, from US-6 near Helper running to US-40 in Duchesne; US-40, from US-191 in Duchesne to the Colorado State Line.

R926-7-8. Process And Criteria For Removing The Designation Of A Highway As A Scenic Byway.

(1) The Committee may dedesignate or segment a Scenic Byway if the intrinsic values for which it was designated have become significantly degraded and no longer meet the requirements for which it was originally designated, or the segment was included for continuity of travel.

(2) Requests for segmentation or de-designation of state scenic byways shall be submitted by a governmental body along or adjacent to the scenic byway. The request shall be submitted to the Committee Chair. Each request shall include discussion of the following:

(a) Organizations (local scenic byway committee, community, county or association of governments) submitting an application for designation, segmentation or de-designation of a scenic byway must hold public hearings for the purpose of receiving the public's views and to respond to questions and concerns expressed. The actual number of hearings will be determined by the Committee Chair, and will be located to collect a broad base of public comments throughout the length of the proposed Scenic Byway changes.

(b) Specific reasons for segmentation or de-designation. Reasons may include, but are not limited to:

(c) Segment or byway is no longer consistent with the state's criteria for selection as a scenic byway;

(i) Failure to maintain or enhance intrinsic values for which the scenic byway was designated;

(ii) Degradation of the intrinsic values for which the scenic byway was selected; (iii) Segment of byway is not representative of the intrinsic values for which the scenic byway was designated, but was included primarily for connectivity;

(iv) State scenic byway designation has become a liability to the corridor.

(v) Upon receipt of the request for segmentation or de-designation, the committee chair will add the request to the agenda of the next Utah Scenic Byways Committee meeting.

(d) The committee will review the request at the next Committee meeting and discuss at least the following:

(i) reasons for segmentation or de-designation.

(ii) Whether segmentation or de-designation of the scenic byway will significantly degrade the statewide scenic byway system;

(iii) Whether segmentation or de-designation is an attempt to evade FHWA rules, regulations or requirements. Requests to segment or de-designate all or part of a scenic byway for the purpose to evade FHWA rules, regulations or requirements will not be considered.

(iv) Following discussion of the request, the committee will vote on the request for segmentation or de-designation. The result to the vote will be forwarded to the requesting governmental body.

(v) Upon segmentation or de-designation approval, the Utah Travel Council, UDOT and other interested agencies will be notified of the change in designation, and will be requested to modify reference of the segment in materials identifying scenic byways to reflect the change in scenic byway status.

KEY: transportation, scenic byways, highways
2005
72-4-301



End of the Notices of Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (*Utah Code* Subsection 63-46a-7(1) (2001)).

As with a PROPOSED RULE, a 120-DAY RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the 120-DAY RULE including the name of a contact person, justification for filing a 120-DAY RULE, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (· · · · ·) indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A 120-DAY RULE is effective for 120 days or until it is superseded by a permanent rule.

Because 120-DAY RULES are effective immediately, the law does not require a public comment period. However, when an agency files a 120-DAY RULE, it usually files a PROPOSED RULE at the same time, to make the requirements permanent. Comment may be made on the proposed rule. Emergency or 120-DAY RULES are governed by *Utah Code* Section 63-46a-7 (2001); and *Utah Administrative Code* Section R15-4-8.

Education, Administration **R277-602** Special Needs Scholarships - Funding and Procedures

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 28026
FILED: 06/14/2005, 14:53

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to outline responsibilities for parents/students, public schools, school districts or charter schools, and private schools that qualify under the law that accept scholarships from special needs students and the Utah State Board of Education in providing choice for parents of special needs students who choose to have their children served in private schools and in providing accountability for the citizenry in the administration and distribution of the scholarship funds.

SUMMARY OF THE RULE OR CHANGE: This rule provides definitions not provided for in the law, provides a summary of responsibilities for all applicants and participants, provides a notice and funding timeline for schools, parents, and the Utah State Board of Education, and makes other necessary provisions required by law.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1a-706(5)(b)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There was significant time spent by state employees to develop and implement this rule. These employees are funded solely with federal funds and should not devote time to implement state legislation. State funding to implement this rule and program does not begin until July 1, 2005. Approximately \$2,625 has been spent through June 1, 2005.

❖ **LOCAL GOVERNMENTS:** Utah State Board of Education anticipates that a minimum of 100 students will avail themselves of the scholarship. 50 will have Individualized Education Programs (IEPs). The other 50 will require an assessment team process that will require local special education staff participation for a minimum of 4 hours each at approximately \$35/hour X 2 school district staff members X 50 students = \$14,000.

❖ **OTHER PERSONS:** Parents will participate in the assessment team process. We are estimating that 100 students will benefit from the scholarship. It is too speculative to estimate the cost or savings to parents who participate in this process. Most of the parents will benefit directly because they will receive a subsidy to have their child in a private school of their choice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Private school personnel will participate in the application and assessment team process under this rule. The cost of that participation is impossible to estimate. Costs will, however, be offset by receipt of significant public school funds.

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

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

There was not time following the Legislative Session for adequate discussion and implementation of the rule using regular rulemaking procedures and timelines.

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

THIS RULE IS EFFECTIVE ON: 06/14/2005

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R277. Education, Administration.

R277-602. Special Needs Scholarships - Funding and Procedures.

R277-602-1. Definitions.

A. "Annual assessment" for purposes of this rule means a formal testing procedure carried out under prescribed and uniform conditions that measures students' academic progress, consistent with Section 53A-1a-705(1)(f).

B. "Assessment team" means the individuals designated under Section 53A-1a-703(1).

C. "Audit of a private school" for purposes of this rule means a financial audit provided by an independent certified public accountant, as provided under Section 53A-1a-705(1)(b).

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

E. "Days" means school days unless specifically designated otherwise in this rule.

F. "Disclosure to parents" for purposes of this rule means the express acknowledgments and acceptance required under Section 53A-1a-704(5) as part of parent application available through schools districts.

G. "Eligible student" for purposes of this rule means:

- (1) the student's parent resides in Utah;
- (2) the student has a disability as designated in 53A-1a-704(2)(b); and
- (3) the student is school age.

(4) Eligible student also means that the student was enrolled in a public school in the school year prior to the school year in which the student will be enrolled in a private school, has an IEP and has obtained acceptance for admission to an eligible private school; and

(5) The requirement to be enrolled in a public school in the year prior and have an IEP does not apply if:

- (a) the student is enrolled or has obtained acceptance for admission to an eligible private school that specializes in serving students with disabilities; and

(b) an assessment team is able to readily determine with reasonable certainty that the student has a disability and would qualify for special education services if enrolled in a public school and the appropriate level of special education services which should be provided to the student at the specialized private school.

H. "Enrollment" for purposes of this rule means that the student has completed the school enrollment process, the school maintains required student enrollment information and documentation of age eligibility, the student is scheduled to receive services at the school, the student attends regularly, and has been accepted consistent with R277-419 and the student's IEP.

I. "Fiscal soundness of a private school" for purposes of this rule means that the school has provided to the USOE the information required under Section 53A-1a-705(1)(b) that includes:

(1) a copy of the audit completed in the school's initial year that the school accepts scholarship audit and opinion letter consistent with Section 53A-1a-705(1)(b) as defined by AICPA standards;

(2) a letter from a certified public accountant stating that the private school:

(a) is insured consistent with R277-602-1J; and

(b) has sufficient funds to maintain operations for the full school year.

J. "Individual education program (IEP)" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Board Special Education Rules and Part B of the Individuals with Disabilities Education Act (IDEA).

K. "Insured" for purposes of this rule means that the school has provided a certificate of insurance for accident and liability insurance in the amount of \$1 million, \$2 million aggregate, and proof of property and auto coverage. Property coverage should include coverage for employees working with funds of the school. The insurance company providing coverage to the school should have a Best rating of at least an A-, and be at least a Category VI company in size.

L. "Northwest accredited special purpose school" means a school accredited by the Northwest Association of Accredited Schools that is public, nonpublic, proprietary or nonprofit. The school has been designated by Northwest as a school that meets the special educational needs of students under unique circumstances. Generally, such schools offer a limited array of educational services and may not adhere to the state's common school compulsory attendance laws or graduation requirements.

M. "Private school that specializes in serving students with disabilities" means the school:

(1) has a student population of at least 80 percent students with identified disabilities under Section 53A-1a-704(2) or is an Northwest accredited special purpose school that serves students with disabilities;

(2) has teachers who meet the requirements of Section 53A-1a-705(1)(g); and

(3) employs adequate staff and teachers with expertise in assessing and programming student disabilities designated under Section 53A-1a-704(2).

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

O. "Warrant" means payment by check to a private school.

R277-602-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, Section 53A-1a-706(5)(b) which provides for Board rules to establish timelines for payments to

private schools, Section 53A-3-410(6)(b)(i)(c) which provides for criminal background checks for employees and volunteers, Section 53A-1a-707 which provides for Board rules about eligibility of students for scholarships and the application process for students to participate in the scholarship program, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to outline responsibilities for parents/students, public schools, school districts or charter schools, and eligible private schools that accept scholarships from special needs students and the State Board of Education in providing choice for parents of special needs students who choose to have their children served in private schools and in providing accountability for the citizenry in the administration and distribution of the scholarship funds.

R277-602-3. Parent/Guardian Responsibilities.

A. If the student is enrolled in a public school or was enrolled in a public school in the year previous to the year in which the scholarship is sought, the parent/guardian shall submit an application, available from the USOE or online at www.usoe.org, to the school district or charter school within which the parent/guardian resides.

(1) The parent shall complete all required information on the application.

(2) Any intentional falsification, misinformation, or incomplete information provided on the application may result in the cancellation of the scholarship to the student and non-payment to the private school.

B. If the student was not enrolled in a public school in the year previous to the year in which the scholarship is sought, but was enrolled in a private school that specializes in serving students with disabilities, the parent/guardian shall submit an application to the school district in which the private school is geographical located (school district responsible for child find under IDEA, Sec. 612(a)(3)). The parent/guardian shall provide:

(1) documentation of student's enrollment in an eligible private school as defined under Section 53A-1a-705;

(2) documentation following an assessment team's evaluation that a student would qualify for special education services and the level of services for which the student would be eligible if enrolled in a public school.

C. Upon completion of the application, parents of students eligible under R277-602-3A or B above shall provide by July 1, or later as allowed by the Board, prior to the year in which admission is sought, the application form together with the following documentation to the student's enrollment district that received the scholarship application:

(1) documentation that the parent/guardian is a resident of the state of Utah;

(2) documentation that the student is at least five years of age, consistent with Section 53A-3-402(6);

(3) documentation that the student is not more than 21 years of age and has not graduated from high school consistent with Section 53A-15-301(1)(a);

(4) documentation that the student has satisfied R277-602-3A or B above;

(5) documentation that the student has official acceptance at an eligible private school, as defined under Section 53A-1a-705;

(6) parent signature on acknowledgments and refusal to consent to services on the application form consistent with Section 53A-1a-704;

(7) notification in writing in the second and third year to indicate continued enrollment.

D. A special needs scholarship shall be effective for three years subject to renewal under Section 53A-1a-704(6).

E. The parent shall, consistent with Section 53A-1a-706(8), endorse the warrant received by the private school from the USOE no more than 15 school days after the private school's receipt of the warrant.

F. The parent shall notify the Board in writing within five days if:

(1) the student does not continue in enrollment in an eligible private school for any reason including parent/student choice, suspension or expulsion of the student; or

(2) the student misses more than 10 consecutive days at which point the Board may modify the payment to the private school consistent with R277-419-1J.

G. The parent shall cooperate and respond within 10 days to an enrollment cross-checking request from the Board.

R277-602-4. School District or Charter School Responsibilities.

A. The school district or charter school that receives the student's scholarship application consistent with Section 53A-1a-704(4) shall forward applications to the Board no more than 10 days following receipt of the application.

B. The school district or charter school that received the student's scholarship application shall:

(1) receive applications from students/parents;

(2) verify enrollment of the student seeking a scholarship in previous school year within a reasonable time following contact by the Board;

(3) verify the existence of the student's IEP and level of service to the USOE within a reasonable time;

(4) provide personnel to participate on an assessment team to determine:

(a) if a student who was previously enrolled in a private school that specializes in serving students with disabilities would qualify for special education services if enrolled in a public school and the appropriate level of special education services which should be provided to the child for purposes of determining the scholarship amount consistent with Section 53A-1a-706(2);

(b) if a student previously receiving a special needs scholarship is entitled to receive the scholarship during the subsequent eligibility period.

C. Special needs scholarship students shall not be enrolled in public or charter schools for dual enrollment or extracurricular activities, consistent with the parents'/guardians' assumption of full responsibility for students' services under Section 53A-1a-704(5).

D. School districts or charter schools shall cooperate with the Board in cross-checking special needs scholarship student enrollment information, as requested by the Board.

R277-602-5. State Board of Education Responsibilities.

A. The Board shall provide applications annually, containing acknowledgments required under Section 53A-1a-704(5), for parents seeking a special needs scholarship online, at the Board offices, at school district or charter school offices, and at charter schools no

later than April 1 prior to the school year in which admission is sought (applications for the 2005-06 school year shall be available no later than June 15).

B. The Board shall provide a determination that a private school meets the eligibility requirements of Section 53A-1a-705 as soon as possible but no more than 30 days after the private school submits an application and completed documentation of eligibility. The Board may:

(1) provide reasonable timelines within the application for satisfaction of private school requirements;

(2) issue letters of warning, require the school to take corrective action within a time frame set by the Board, suspend the school from the program consistent with Section 53A-1a-708, or impose such other penalties as the Board determines appropriate under the circumstances.

(3) establish appropriate consequences or penalties for private schools that:

(a) fail to provide affidavits under Section 53A-1a-708;

(b) fail to administer assessments, fail to report assessments to parents or fail to report assessments to assessment team under Section 53a-1a-705(1)(f);

(c) fail to employ teachers with credentials required under Section 53A-1a-705(g);

(d) fail to provide to parents relevant credentials of teachers under Section 53A-1a-705(h);

(e) fail to require completed criminal background checks under Section 53A-3-410(2) and take appropriate action consistent with information received.

(4) initiate complaints and hold administrative hearings, as appropriate, and consistent with R277-602.

C. The Board shall make a list of eligible private schools updated annually and available no later than May 30 (June 25 for 2005-2006 school year).

D. Information about approved scholarships and availability and level of funding shall be provided to scholarship applicant parents/guardians no later than July 30 of each year.

E. The Board shall mail scholarships directly to private schools as soon as reasonably possible consistent with Section 53A-1a-706(8).

F. For the 2005-06 school year, payments shall begin September 1 to private schools.

G. Beginning with the 2006-07 school year, the Board may begin scholarship payments to eligible private schools no earlier than July 1 but before payment dates established by Section 53A-1a-706(5)(a) if the parent/guardian negotiates a payment date with the USOE, provides reasonable advance notice to the USOE and assumes responsibility for transmission of the payment from the USOE to the private school.

H. If an annual legislative appropriation is inadequate to cover all scholarship applicants and documented levels of service, the Board shall establish by rule a lottery system for determining the scholarship recipients, with preference provided for under Section 53A-1a-1.

I. The Board shall verify and cross-check with school districts or charter school special needs scholarship student enrollment information consistent with Section 53A-1a-706(7).

R277-602-6. Responsibilities of Private Schools that Receive Special Needs Scholarships.

A. Private schools shall submit applications and by May 1 (June 15 by 2005-06 school year) and satisfy eligibility requirements

within 10 days preceding the school year of eligibility to receive special needs scholarships consistent with Section 53A-1a-705.

B. Applications and appropriate documentation from private schools for eligibility to receive special needs scholarship students shall be provided to the USOE consistent with Section 53A-1a-705(3).

C. Private schools shall satisfy criminal background check requirements for employees and volunteers consistent with Section 53A-3-410.

D. Private schools that seek to enroll special needs scholarship students shall, in concert with the parent seeking a special needs scholarship for a student, initiate the assessment team meetings required under Sections 53A-1a-704(3) and 53A-1a-704(6).

(1) Meetings shall be scheduled at times and locations mutually acceptable to private schools, applicant parents and participating public school personnel.

(2) Designated private school and public school personnel shall maintain documentation of the meetings and the decisions made for the students.

(3) Documentation regarding required assessment team meetings, including documentation of meetings for students denied scholarships or services and students admitted into private schools and their levels of service, shall be maintained confidentially by the private and public schools, except the information shall be provided for purposes of audit or verification of services upon request by the USOE.

E. Private schools receiving scholarship payments under this rule shall provide complete student records in a timely manner to other private schools or public schools requesting student records if parents have transferred students under Section 53A-1a-704(7).

F. Private schools shall notify the Board within five days if:

(1) the student does not continue in enrollment in an eligible private school for any reason including parent/student choice, suspension or expulsion of the student; or

(2) the student misses more than 10 consecutive days of school.

G. Private schools shall satisfy health and safety laws and codes under Section 53A-1a-705(1)(d) including:

(1) the adoption of emergency preparedness response plans that include training for school personnel and parent notification for fire drills, natural disasters, and school safety emergencies and

(2) compliance with R392-200, Design, Construction, Operation, Sanitation, and Safety of Schools.

R277-602-7. Retroactive Scholarship Payments.

A. Retroactive scholarship payments shall be made to parents consistent with eligibility criteria for private schools, private schools specializing in serving students with disabilities, eligible students as outlined in R277-602 for the 2004-2005 school year as provided under Section 53A-1a-706(9)(a).

B. Retroactive scholarship payments shall be made to parents submitting required documentation no later than September 1, 2005.

KEY: special needs students, scholarships

June 14, 2005

Art X Sec 3

53A-1a-706(5)(b)

53A-3-410(6)(i)(c)

53A-1a-707

53A-1-401(3)



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).

Health, Administration **R380-40** Local Health Department Minimum Performance Standards

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 27990
FILED: 06/06/2005, 11:19

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is required by Subsection 26A-1-106(1)(c), which requires the Department of Health to establish minimum performance standards for local health departments.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Prior to the adoption of a significant rule amendment late in 2004, the rule required a physician health officer in larger health districts. A waiver to this requirement had been granted on several occasions. Written comments were received about the waivers from county commissioners and other interested parties, supporting loosening this requirement.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets local health department minimum performance standards to establish minimum public health programs throughout the state. Therefore, this rule should be continued.

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

HEALTH
ADMINISTRATION
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Doug Springmeyer at the above address, by phone at 801-538-6971, by FAX at 801-538-6306, or by Internet E-mail at dspringm@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 06/06/2005



Health, Health Care Financing, Coverage and Reimbursement Policy **R414-19A** Coverage for Dialysis Services by a Free-Standing State Licensed Dialysis Facility

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 27985
FILED: 06/03/2005, 15:15

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 26-1-5 that grants the Utah Department of Health the power to adopt, amend, or rescind rules that shall have the

force and effect of law. In addition, Section 26-18-3 requires the Department to administer the Medicaid program. Furthermore, 42 CFR 440.90 authorizes the provision of clinic services for outpatient dialysis.

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 or oral comments have been received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because Medicaid needs to cover all necessary dialysis procedures and equipment prior to Medicare coverage of dialysis services.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 06/03/2005

Health, Health Care Financing,
Coverage and Reimbursement Policy

R414-33

Targeted Case Management Services

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

DAR FILE No.: 27986
FILED: 06/03/2005, 15:23

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 26-1-5 that grants the Utah Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law. In addition, Section 26-18-3 requires the Department to administer the Medicaid program. Furthermore, 42 USC 1396n(g) authorizes the provision of optional targeted case management services.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written or oral comments have been received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it provides federal matching funds for the Department of Human Services, as it administers child welfare targeted case management services.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Craig Devashrayee or Jeff Dean at the above address, by phone at 801-538-6641 or 801-538-6638, by FAX at 801-538-6099 or 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov or jeffdean@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 06/03/2005

Health, Medical Examiner

R448-10

Unattended Death and Reporting
Requirements

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

DAR FILE No.: 27988
FILED: 06/06/2005, 11:10

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 26-1-5. It clarifies the meaning of unattended death under the provisions of Subsection 26-4-2(8) and the requirements of Section 26-4-8.

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 eliminates the need to report a death to the Medical Examiner as "unattended" if the patient has been seen by a nurse who is under the direct supervision of the patient's treating physician even if the physician has not see the patient within 30 days prior to death. Elimination of this rule would needlessly increase the number of cases referred to the Medical Examiner. Therefore, this rule should be continued.

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

HEALTH
 MEDICAL EXAMINER
 48 N MEDICAL DR
 SALT LAKE CITY UT 84113-1105, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Todd Grey at the above address, by phone at 801-584-8410, by FAX at 801-584-8435, or by Internet E-mail at toddgrey@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 06/06/2005



Health, Medical Examiner
R448-20
Access to Medical Examiner Reports

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR File No.: 27989
 FILED: 06/06/2005, 11:13

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 26-1-5. It establishes who may, under the provisions of Subsection 26-4-17(3), access medical examiner reports generated in the investigation of a death.

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 clarifies who may obtain records from the Office of the Medical Examiner, the procedure for establishing a right to the records, and how they may be obtained. It also establishes equivalency between all valid requesters. If the rule were removed, there would be no

guidelines for how to respond to competing claims to records by different valid requesters, which could possibly limit access to records by different next-of-kin. Therefore, this rule should be continued.

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

HEALTH
 MEDICAL EXAMINER
 48 N MEDICAL DR
 SALT LAKE CITY UT 84113-1105, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Todd Grey at the above address, by phone at 801-584-8410, by FAX at 801-584-8435, or by Internet E-mail at toddgrey@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 06/06/2005



Insurance, Administration
R590-171
Surplus Lines Procedures Rule

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR File No.: 28027
 FILED: 06/14/2005, 16:58

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201 gives the commissioner the authority to promulgate rules to implement the provisions of Title 31A. Subsection 31A-15-103(3) gives the commissioner the authority to write a rule to prescribe a remuneration for insurance placed by a surplus lines producer and also advertise surplus lines services. This is done in Section R590-171-7 of the rule. Subsection 31A-15-103(11) gives the commissioner the right to establish an organization to examine surplus lines policies to be sure they comply with the requirements of the law and the payment of taxes. This is done in Section R590-171-4 of the rule. Section 31A-15-111 gives the commissioner the authority to require by rule that surplus lines brokers be members of an advisory organized under this section of the law. This is done in Subsection R590-171-4(B) of the rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received any 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: The rule was written to support Sections 31A-15-103 and 31A-15-111. It further defines the authority of the Surplus Lines Association, outlines the conditions for placing insurance with surplus lines insurers, and provides examination requirements for the Surplus Lines Association. The rule also provides a measure of accountability for the Surplus Lines Association and how this line of insurance can be sold in Utah. Therefore, this rule should be continued.

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: 06/14/2005

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: The rule is there for the purposes of maintaining a health benefit plan market that is stable, fair, and efficient for individuals and small employers and ensuring and maintaining increased access for individuals and small employers to health coverage. It promotes an orderly process by which an insurer can elect to nonrenew health benefit plan coverages without unreasonable disruption to the health insurance market. Therefore, this rule should be continued.

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: 06/15/2005



Insurance, Administration
R590-199
Plan of Orderly Withdrawal Rule
Relating to Health Benefit Plans

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**
DAR FILE No.: 28028
FILED: 06/15/2005, 08:25

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) allows the commissioner to write rules to implement the provisions of Title 31A. Subsection 31A-4-115(8) allows the commissioner to write rules to implement this section regarding an insurer's "Plan of Orderly Withdrawal," which is the title of this rule. The rule sets the information that is to be a part of the withdrawal plan and the way in which it is to be implemented, including to whom and when notification of the withdrawal is to be sent, etc.

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



Labor Commission, Antidiscrimination
and Labor, Antidiscrimination
R606-3
Nondiscrimination Clause to be used in
Contracts Entered into by the State of
Utah and its Agencies

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**
DAR FILE No.: 28003
FILED: 06/08/2005, 14:25

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 34A-5-104 gives the Commission jurisdiction over the subject of employment practices and discrimination made unlawful by Title 34A, Chapter 5. It also gives the Commission authority to adopt, publish, amend, and rescind rules, consistent with and for the enforcement of Title 34A, Chapter 5.

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 during and since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Labor Commission continues to have jurisdiction over discrimination in employment. This rule establishes that any contractor entering into a contact with the State of Utah and/or its agencies must not discriminate and must place a clause into the contract and any subcontracts to that effect. Therefore, this rule should be continued.

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

LABOR COMMISSION
ANTIDISCRIMINATION AND LABOR,
ANTIDISCRIMINATION
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:

Sherrie M. Hayashi at the above address, by phone at 801-530-6921, by FAX at 801-530-7609, or by Internet E-mail at shayashi@utah.gov

AUTHORIZED BY: R Lee Ellertson, Commissioner

EFFECTIVE: 06/08/2005



Labor Commission, Antidiscrimination
and Labor, Antidiscrimination
R606-4
Advertising

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

DAR FILE NO.: 28004
FILED: 06/08/2005, 14:26

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 34A-5-104 gives the Commission jurisdiction over the subject of employment practices and discrimination made unlawful by Title 34A, Chapter 5. It also gives the Commission authority to adopt, publish, amend, and rescind rules, consistent with and for the enforcement of Title 34A, Chapter 5.

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 during and since the last five-year review of this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Labor Commission continues to have jurisdiction over discrimination in employment. This rule establishes that help-wanted advertisements must not indicate a discriminatory preference unless there is a bona fide occupational qualification requirement for that preference. Therefore, this rule should be continued.

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

LABOR COMMISSION
ANTIDISCRIMINATION AND LABOR,
ANTIDISCRIMINATION
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:

Sherrie M. Hayashi at the above address, by phone at 801-530-6921, by FAX at 801-530-7609, or by Internet E-mail at shayashi@utah.gov

AUTHORIZED BY: R Lee Ellertson, Commissioner

EFFECTIVE: 06/08/2005



Labor Commission, Antidiscrimination
and Labor, Antidiscrimination
R606-5
Employment Agencies

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

DAR FILE NO.: 28005
FILED: 06/08/2005, 14:28

**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 34A-5-104 gives the Commission jurisdiction over the subject of employment practices and discrimination made unlawful by Title 34A, Chapter 5. It also gives the Commission authority to adopt, publish, amend, and rescind rules, consistent with and for the enforcement of Title 34A, Chapter 5.

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 during and since the last five-year review of this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Labor Commission continues to have jurisdiction over employment discrimination. This rule establishes that employment agencies share liability with the employer if the employment agency attempts to fill a position for an employer based on unlawfull discriminatory criteria. It also establishes an exception for application forms asking for gender information, if the inquiry is made in good faith for a nondiscriminatory purpose and is based upon a bona fide occupational qualification. Therefore, this rule should be continued.

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

LABOR COMMISSION
ANTIDISCRIMINATION AND LABOR,
ANTIDISCRIMINATION
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:
Sherrie M. Hayashi at the above address, by phone at 801-530-6921, by FAX at 801-530-7609, or by Internet E-mail at shayashi@utah.gov

AUTHORIZED BY: R Lee Ellertson, Commissioner

EFFECTIVE: 06/08/2005

▼ ————— ▼
**Labor Commission, Antidiscrimination
and Labor, Antidiscrimination
R606-6
Regulation of Practice and Procedure
on Employer Reports and Records**

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

DAR FILE NO.: 28002
FILED: 06/08/2005, 14:24

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 34A-5-104 gives the Commission jurisdiction over the subject of employment practices and discrimination made unlawful by Title 34A, Chapter 5. It also gives the Commission authority to adopt, publish, amend, and rescind rules, consistent with and for the enforcement of Title 34A, Chapter 5.

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 during and since the last five-year review of this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Labor Commission continues to have jurisdiction over discrimination in employment. This rule establishes the procedures for employers to follow in keeping personnel records in order to defend a claim of discrimination. Therefore, this rule should be continued.

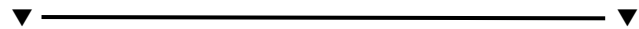
THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

LABOR COMMISSION
ANTIDISCRIMINATION AND LABOR,
ANTIDISCRIMINATION
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:
Sherrie M. Hayashi at the above address, by phone at 801-530-6921, by FAX at 801-530-7609, or by Internet E-mail at shayashi@utah.gov

AUTHORIZED BY: R Lee Ellertson, Commissioner

EFFECTIVE: 06/08/2005



NOTICES OF RULE EFFECTIVE DATES

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

Abbreviations

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

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 27805 (AMD): R414-1. Utah Medicaid Program.
 Published: May 1, 2005
 Effective: June 3, 2005

No. 27806 (AMD): R414-7A. Medicaid Certification of New Nursing Facilities.
 Published: May 1, 2005
 Effective: June 3, 2005

No. 27854 (AMD): R414-31. Inpatient Psychiatric Services for Individuals Under Age 21 in Psychiatric Facilities or Programs.
 Published: May 15, 2005
 Effective: June 15, 2005

Insurance

Administration

No. 27829 (R&R): R590-93. Replacement of Life Insurance and Annuities.
 Published: May 1, 2005
 Effective: June 8, 2005

Judicial Conduct Commission

No. 27807 (AMD): R595-4-2. Sanctions Guidelines.
 Published: May 1, 2005
 Effective: June 2, 2005

Public Safety

Fire Marshal

No. 27671 (AMD): R710-7-1. Adoption of Codes.
 Published: February 15, 2005
 Effective: June 13, 2005

Public Service Commission

Administration

No. 27821 (AMD): R746-341. Lifeline Rule.
 Published: May 1, 2005
 Effective: June 20, 2005

Tax Commission

Auditing

No. 27804 (AMD): R865-9I-21. Return By Partnership Pursuant to Utah Code Ann. Section 59-10-507.
 Published: May 1, 2005
 Effective: June 8, 2005

No. 27819 (AMD): R865-19S-20. Basis for Reporting Tax Pursuant to Utah Code Ann. Section 59-12-107.
 Published: May 1, 2005
 Effective: July 1, 2005

No. 27820 (AMD): R865-19S-32. Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-103.
 Published: May 1, 2005
 Effective: July 1, 2005

No. 27822 (AMD): R865-19S-51. Fabrication and Installation Labor in Connection With Retail Sales of Tangible Personal Property Pursuant to Utah Code Ann. Section 59-12-103.
 Published: May 1, 2005
 Effective: July 1, 2005

No. 27825 (AMD): R865-19S-52. Federal, State and Local Taxes Pursuant to Utah Code Ann. Section 59-12-102.
 Published: May 1, 2005
 Effective: July 1, 2005

No. 27826 (AMD): R865-19S-60. Sales of Machinery, Fixtures and Supplies to Manufacturers, Businessmen and Others Pursuant to Utah Code Ann. Section 59-12-103.
 Published: May 1, 2005
 Effective: July 1, 2005

No. 27828 (AMD): R865-19S-68. Premiums, Gifts, Rebates, and Coupons Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.
 Published: May 1, 2005
 Effective: July 1, 2005

No. 27831 (AMD): R865-19S-71. Transportation Charges in Connection With the Sale of Tangible Personal Property Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.
 Published: May 1, 2005
 Effective: July 1, 2005

No. 27832 (AMD): R865-19S-85. Sales and Use Tax Exemptions for New or Expanding Operations and

Normal Operating Replacements Pursuant to Utah Code Ann. Section 59-12-104.
Published: May 1, 2005
Effective: July 1, 2005

No. 27833 (AMD): R865-19S-90. Telephone Service Pursuant to Utah Code Ann. Section 59-12-103.
Published: May 1, 2005
Effective: July 1, 2005

No. 27834 (AMD): R865-19S-101. Application of Sales Tax to Fees Assessed in Conjunction with the Retail Sale of a Motor Vehicle Pursuant to Utah Code Ann. Section 59-12-103.

Published: May 1, 2005
Effective: July 1, 2005

Motor Vehicle

No. 27803 (AMD): R873-22M-27. Issuance of Special Group License Plates Pursuant to Utah Code Ann. Sections 41-1a-408, 41-1a-409 and 41-1a-414.

Published: May 1, 2005
Effective: June 8, 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 2, 2005, including notices of effective date received through June 15, 2005, the effective dates of which are no later than July 1, 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>Child Welfare Parental Defense (Office of)</u>					
R19-1	Parental Defense Counsel Training	27518	NEW	05/13/2005	2004-22/9
R19-1	Parental Defense Training Standards	27518	CPR	05/13/2005	2005-2/94
<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>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	27848	AMD	07/01/2005	2005-10/7

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>Fleet Operations</u>					
R27-1-2	Definitions	27546	AMD	01/10/2005	2004-23/3
R27-3-6	Application for Commute or Take Home Use	27599	NSC	02/01/2005	Not Printed
R27-4	Vehicle Replacement and Expansion of State Fleet	27543	AMD	01/10/2005	2004-23/5
R27-4-1	Authority	27594	NSC	02/01/2005	Not Printed
R27-6	Fuel Dispensing Program	27544	AMD	01/10/2005	2004-23/7
<u>Records Committee</u>					
R35-1a	State Records Committee Definitions	27621	NEW	03/08/2005	2005-2/17
R35-1a	State Records Committee Definitions	27700	NSC	04/01/2005	Not Printed
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
Alcoholic Beverage Control					
<u>Administration</u>					
R81-5-5	Advertising	27725	AMD	05/01/2005	2005-6/3
R81-5-14	Membership Fees and Monthly Dues	27726	AMD	05/01/2005	2005-6/4
R81-5-17	Visitor Cards	27727	AMD	05/01/2005	2005-6/5

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Capitol Preservation Board (State)					
<u>Administration</u>					
R131-1	Procurement of Architectural and Engineering Services	27711	5YR	02/16/2005	2005-6/33
R131-2	Capitol Hill Facility Use	27712	5YR	02/16/2005	2005-6/33
R131-7	State Capitol Preservation Board Master Planning Policy	27713	5YR	02/16/2005	2005-6/34
R131-8	CPB Facilities and Grounds: Maintenance of Aesthetics	27631	NEW	03/03/2005	2005-2/24
R131-9	State Capitol Preservation Board Art Program and Policy	27632	NEW	03/03/2005	2005-2/26
Commerce					
<u>Administration</u>					
R151-1	Department of Commerce General Provisions	27633	NEW	02/15/2005	2005-2/29
R151-46b	Department of Commerce Administrative Procedures Act Rules	27636	AMD	02/15/2005	2005-2/32
<u>Occupational and Professional Licensing</u>					
R156-1	General Rules of the Division of Occupational and Professional Licensing	27499	NSC	01/01/2005	Not Printed
R156-17a	Pharmacy Practice Act Rules	27786	REP	05/17/2005	2005-8/2
R156-17b	Pharmacy Practice Act Rules	27529	CPR	05/17/2005	2005-8/43
R156-17b	Pharmacy Practice Act Rules	27529	NEW	05/17/2005	2004-23/20
R156-17b	Pharmacy Practice Act Rules	27529	CPR	05/17/2005	2005-4/31
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rules	27698	AMD	04/04/2005	2005-5/2
R156-26a	Certified Public Accountant Licensing Act Rules	27835	AMD	06/21/2005	2005-10/12
R156-31b	Nurse Practice Act Rules	27600	AMD	02/17/2005	2005-2/36
R156-31b	Nurse Practice Act Rules	27714	NSC	04/01/2005	Not Printed
R156-38	Residence Lien Restriction and Lien Recovery Fund Rules	27752	5YR	03/15/2005	2005-7/75
R156-38b	State Construction Registry Rules	27734	NEW	04/18/2005	2005-6/6
R156-47b	Massage Therapy Practice Act Rules	27548	CPR	03/07/2005	2005-3/51
R156-47b	Massage Therapy Practice Act Rules	27548	AMD	03/07/2005	2004-24/7
R156-50	Private Probation Provider Licensing Act Rules	27435	CPR	01/18/2005	2004-24/58
R156-50	Private Probation Provider Licensing Act Rules	27435	AMD	01/18/2005	2004-20/12
R156-55d	Utah Construction Trades Licensing Act Burglar Alarm Licensing Rules	28048	5YR	06/28/2005	Not Printed
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>Real Estate</u>					
R162-2-2	Licensing Procedure	27720	NSC	04/01/2005	Not Printed
R162-102-1	Application	27797	AMD	05/25/2005	2005-8/12
R162-107	Unprofessional Conduct	27788	AMD	05/25/2005	2005-8/14
<u>Securities</u>					
R164-2	Investment Adviser - Unlawful Acts	27732	5YR	02/28/2005	2005-6/34
R164-2-1	Investment Adviser Performance-Based Compensation Contracts	27735	NSC	04/01/2005	Not Printed

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
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
R277-407	School Fees	27798	AMD	05/19/2005	2005-8/15
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
R277-437	Student Enrollment Options	27799	AMD	05/19/2005	2005-8/17
R277-438	Dual Enrollment	27800	AMD	05/19/2005	2005-8/19
R277-473	Testing Procedures	27547	AMD	01/04/2005	2004-23/43
R277-473	Testing Procedures	27872	5YR	05/09/2005	2005-11/90
R277-501	Educator Licensing Renewal, Highly Qualified and Timelines	27722	5YR	02/23/2005	2005-6/35
R277-602	Special Needs Scholarships - Funding and Procedures	28026	EMR	06/14/2005	2005-13/47
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
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
R307-210	Stationary Sources	27665	AMD	04/19/2005	2005-4/17
<u>Drinking Water</u>					
R309-100	Administration: Drinking Water Program	27912	5YR	05/16/2005	2005-11/90
R309-105	Administration: General Responsibilities of Public Water Systems	27907	5YR	05/16/2005	2005-11/91
R309-110	Administration: Definitions	27911	5YR	05/16/2005	2005-11/91
R309-115	Administration: Administrative Procedures	27908	5YR	05/16/2005	2005-11/92

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R309-150	Water System Rating Criteria	27909	5YR	05/16/2005	2005-11/92
R309-200	Monitoring and Water Quality: Drinking Water Standards	27913	5YR	05/16/2005	2005-11/93
R309-205	Monitoring and Water Quality: Source Monitoring Requirements	27917	5YR	05/16/2005	2005-11/93
R309-210	Monitoring and Water Quality: Distribution System Monitoring	27918	5YR	05/16/2005	2005-11/94
R309-215	Monitoring and Water Quality: Treatment Plant Monitoring	27910	5YR	05/16/2005	2005-11/94
R309-220	Monitoring and Water Quality: Public Notification Requirements	27914	5YR	05/16/2005	2005-11/95
R309-225	Monitoring and Water Quality: Consumer Confidence Reports	27905	5YR	05/16/2005	2005-11/95
R309-300	Certification Rules for Water Supply Operators	27906	5YR	05/16/2005	2005-11/96
R309-305	Certification Rules for Backflow Technicians	27617	NSC	02/01/2005	Not Printed
R309-305	Certification Rules for Backflow Technicians	27915	5YR	05/16/2005	2005-11/96
R309-305	Certification Rules for Backflow Technicians (5YR EXTENSION)	27780	NSC	05/16/2005	Not Printed
R309-405	Compliance and Enforcement: Administrative Penalty (5YR EXTENSION)	27781	NSC	05/16/2005	Not Printed
R309-405	Compliance and Enforcement: Administrative Penalty	27916	5YR	05/16/2005	2005-11/97
R309-600	Drinking Water Source Protection for Groundwater Sources	27816	5YR	04/14/2005	2005-9/76
R309-605	Source Protection: Drinking Water Source Protection for Surface Water Sources	27815	5YR	04/14/2005	2005-9/76
<u>Radiation Control</u>					
R313-12	General Provisions	27746	AMD	05/13/2005	2005-7/29
R313-15	Standards for Protection Against Radiation	27744	AMD	05/13/2005	2005-7/33
R313-19	Requirements of General Applicability to Licensing of Radioactive Material	27745	AMD	05/13/2005	2005-7/34
R313-22	Specific Licenses	27747	AMD	05/13/2005	2005-7/36
R313-32	Medical Use of Radioactive Material	27748	AMD	05/13/2005	2005-7/38
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>					
R317-1	Definitions and General Requirements	27659	AMD	04/20/2005	2005-3/5
R317-2	Standards of Quality for Waters of the State	27593	CPR	06/01/2005	2005-9/72
R317-2	Standards of Quality for Waters of the State	27593	AMD	06/01/2005	2005-1/13
R317-3-10	Lagoons	27658	AMD	04/20/2005	2005-3/10
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
R317-8-3	Application Requirements	27657	AMD	04/20/2005	2005-3/12
R317-10-6	Facility Classification System	27656	AMD	04/20/2005	2005-3/18
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
R380-40	Local Health Department Minimum Performance Standards	27990	5YR	06/06/2005	2005-13/52

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>Epidemiology and Laboratory Services, Epidemiology</u>					
R386-702	Communicable Disease Rule	27496	CPR	05/16/2005	2005-3/53
R386-702	Communicable Disease Rule	27496	AMD	05/16/2005	2004-21/13
R386-800	Immunization Coordination	27934	5YR	05/24/2005	2005-12/89
<u>Epidemiology and Laboratory Services, Environmental Services</u>					
R392-600	Illegal Drug Operations Decontamination Standards	27650	NEW	05/02/2005	2005-3/19
<u>Health Care Financing, Coverage and Reimbursement Policy</u>					
R414-1	Utah Medicaid Program	27805	AMD	06/03/2005	2005-9/6
R414-1B	Prohibition of Payment for Certain Abortion Services	27582	NSC	02/01/2005	Not Printed
R414-7A	Medicaid Certification of New Nursing Facilities	27806	AMD	06/03/2005	2005-9/10
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
R414-14	Home Health Service	27733	AMD	04/26/2005	2005-6/12
R414-19A	Coverage for Dialysis Services by a Free-Standing State Licensed Dialysis Facility	27985	5YR	06/03/2005	2005-13/52
R414-31	Inpatient Psychiatric Services for Individuals Under Age 21 in Psychiatric Facilities or Programs	27854	AMD	06/15/2005	2005-10/19
R414-33	Targeted Case Management Services	27986	5YR	06/03/2005	2005-13/53
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
<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	Birth Center Construction Rule	27681	5YR	01/28/2005	2005-4/51

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
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
R432-270-10	Admissions	27692	AMD	05/10/2005	2005-5/24
<u>Epidemiology and Laboratory Services, Laboratory Improvement</u>					
R444-14	Rule for the Certification of Environmental Laboratories	27850	AMD	07/01/2005	2005-10/26
<u>Medical Examiner</u>					
R448-10	Unattended Death and Reporting Requirements	27988	5YR	06/06/2005	2005-13/53
R448-20	Access to Medical Examiner Reports	27989	5YR	06/06/2005	2005-13/54
Human Services					
<u>Administration, Administrative Services, Licensing</u>					
R501-18	Abuse Background Screening	27673	5YR	01/27/2005	2005-4/52
R501-19	Residential Treatment Programs	27839	5YR	04/25/2005	2005-10/51
R501-20	Day Treatment Programs	27836	5YR	04/21/2005	2005-10/51
R501-21	Outpatient Treatment Programs	27837	5YR	04/22/2005	2005-10/52
R501-22	Residential Support Programs	27838	5YR	04/22/2005	2005-10/52
<u>Aging and Adult Services</u>					
R510-104	Nutrition Programs for the Elderly(NPE)	28040	5YR	06/22/2005	Not Printed
R510-401	Utah Caregiver Support Program	28039	5YR	06/22/2005	Not Printed
<u>Child and Family Services</u>					
R512-75	Rules Governing Adjudication of Consumer Complaints	27883	5YR	05/12/2005	2005-11/98
<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
R527-394	Posting Bond or Security	27881	5YR	05/12/2005	2005-11/98
R527-475	State Tax Refund Intercept	27641	5YR	01/06/2005	2005-3/59
<u>Services for People with Disabilities</u>					
R539-1	Eligibility	27568	AMD	01/25/2005	2004-24/17
R539-2	Service Coordination	27626	NEW	03/12/2005	2005-2/45
R539-2	Civil Rights	27651	REP	03/12/2005	2005-3/31
R539-2-6	Entry Into and Movement Within Service System	27792	AMD	05/17/2005	2005-8/29
R539-3	Service Coordination	27652	REP	03/12/2005	2005-3/34
R539-3	Rights and Protections	27627	NEW	03/12/2005	2005-2/47
R539-3-10	Prohibited Procedures	27793	AMD	05/17/2005	2005-8/30
R539-4	Quality Assurance	27753	REP	05/03/2005	2005-7/58
R539-4	Behavior Interventions	27724	NEW	05/03/2005	2005-6/16
R539-5	Preparation and Maintenance of Client Records	27802	REP	05/17/2005	2005-8/31
R539-5	Self-Administered Services	27801	NEW	05/17/2005	2005-8/33

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R539-7	Home Based Services	28037	EMR	06/20/2005	Not Printed
R539-8	Community-Based Services	27795	REP	05/17/2005	2005-8/35
Insurance					
<u>Administration</u>					
R590-88	Prohibited Transactions Between Agents and Unauthorized Multiple Employer Trusts	27684	5YR	01/31/2005	2005-4/53
R590-93	Replacement of Life Insurance and Annuities	27829	R&R	06/08/2005	2005-9/12
R590-99-4	Definition and Classification of Unfair or Deceptive Practices and Material Inducements	27723	NSC	04/01/2005	Not Printed
R590-102-13	Dedicated Fees	27715	NSC	04/01/2005	Not Printed
R590-128	Unfair Discrimination Based Solely on the Failure to Maintain Auto Insurance (Revised)	27685	5YR	01/31/2005	2005-4/53
R590-132	Insurance Treatment of Human Immunodeficiency Virus (HIV) Infection	27686	5YR	01/31/2005	2005-4/54
R590-140	Reference Filings of Rate Service Organization Prospective Loss Costs	27785	5YR	03/31/2005	2005-8/56
R590-147	Annual and Quarterly Statement Filing Instructions	27556	R&R	02/10/2005	2004-24/21
R590-148-12	Applications, Enrollment and Replacement of Coverage	27719	AMD	04/28/2005	2005-6/19
R590-163	Filing Quarterly Statements	27554	REP	02/10/2005	2004-24/23
R590-164	Uniform Health Billing Rule	27784	5YR	03/31/2005	2005-8/57
R590-171	Surplus Lines Procedures Rule	28027	5YR	06/14/2005	2005-13/54
R590-172	Notice to Uninsurable Applicants for Health Insurance	27866	5YR	05/05/2005	2005-11/98
R590-174	Diskette Filing of Annual and Quarterly Statements	27555	REP	02/10/2005	2004-24/24
R590-196	Bail Bond Surety Fee Standards, Collateral Standards, and Disclosure Form	27644	5YR	01/07/2005	2005-3/60
R590-196	Bail Bond Surety Fee Standards, Collateral Standards, and Disclosure Form	27558	AMD	02/10/2005	2004-24/25
R590-199	Plan of Orderly Withdrawal Rule Relating to Health Benefit Plans	28028	5YR	06/15/2005	2005-13/55
R590-226-3	Documents Incorporated by Reference	27716	AMD	04/28/2005	2005-6/21
R590-227-3	Incorporation by Reference	27717	AMD	04/28/2005	2005-6/22
R590-228-3	Documents Incorporated by Reference	27718	AMD	04/28/2005	2005-6/23
R590-231	Workers' Compensation Market of Last Resort	27488	CPR	05/20/2005	2005-3/55
R590-231	Workers' Compensation Market of Last Resort	27488	NEW	05/20/2005	2004-21/15
R590-231	Workers' Compensation Market of Last Resort	27488	CPR	05/20/2005	2005-8/50

Judicial Conduct Commission

Administration

R595-1	General Provisions	27330	NEW	02/01/2005	2004-17/18
R595-1	Rules of Procedure	27580	REP	02/01/2005	2005-1/26
R595-1	General Provisions	27330	CPR	02/01/2005	2004-24/59
R595-2	Administration	27331	CPR	02/01/2005	2004-24/60
R595-2	Administration	27331	NEW	02/01/2005	2004-17/23
R595-3	Procedure	27332	NEW	02/01/2005	2004-17/24
R595-3	Procedure	27332	CPR	02/01/2005	2004-24/61
R595-3-10	Discipline by Consent	27668	NSC	02/01/2005	Not Printed
R595-4	Sanctions	27333	NEW	02/01/2005	2004-17/26
R595-4	Sanctions	27333	CPR	02/01/2005	2004-24/64
R595-4-2	Sanctions Guidelines	27807	AMD	06/02/2005	2005-9/37

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Labor Commission					
<u>Antidiscrimination and Labor, Antidiscrimination</u>					
R606-3	Nondiscrimination Clause to be used in Contracts Entered into by the State of Utah and its Agencies	28003	5YR	06/08/2005	2005-13/56
R606-4	Advertising	28004	5YR	06/08/2005	2005-13/56
R606-5	Employment Agencies	28005	5YR	06/08/2005	2005-13/57
R606-6	Regulation of Practice and Procedure on Employer Reports and Records	28002	5YR	06/08/2005	2005-13/57
<u>Safety</u>					
R616-2-3	Safety Codes and Rules for Boilers and Pressure Vessels	27616	AMD	03/07/2005	2005-2/49
R616-3-3	Safety Codes for Elevators	27590	AMD	02/01/2005	2005-1/30
Money Management Council					
<u>Administration</u>					
R628-11	Maximum Amount of Public Funds Allowed to be Held by any Qualified Depository	27689	AMD	03/22/2005	2005-4/18
R628-15	Certification as an Investment Adviser	27743	NEW	05/05/2005	2005-7/60
R628-19	Requirements for the Use of Investment Advisers by Public Treasurers	27742	R&R	05/05/2005	2005-7/64
Natural Resources					
<u>Oil, Gas and Mining: Coal</u>					
R645-105	Blaster Training, Examination and Certification	27778	5YR	03/25/2005	2005-8/58
R645-400	Inspection and Enforcement: Division Authority and Procedures	27779	5YR	03/25/2005	2005-8/58
<u>Parks and Recreation</u>					
R651-202	Boating Advisory Council	27560	AMD	01/15/2005	2004-24/28
R651-205-7	Palisade Lake	27559	AMD	01/15/2005	2004-24/29
R651-206	Carrying Passengers for Hire	27561	AMD	01/15/2005	2004-24/29
R651-206	Carrying Passengers for Hire	27664	NSC	02/01/2005	Not Printed
R651-209	Registration Expiration	27562	REP	01/15/2005	2004-24/32
R651-211	Assigned Numbers	27563	AMD	01/15/2005	2004-24/33
R651-212	Display of Yearly Registration Decals and Month of Expiration Decals	27564	AMD	01/15/2005	2004-24/34
R651-215	Personal Flotation Devices	27565	AMD	01/15/2005	2004-24/35
R651-401	Off-Highway Vehicle and Registration Stickers	27566	AMD	01/15/2005	2004-24/37
<u>Forestry, Fire and State Lands</u>					
R652-70-1900	Camping and Motor Vehicles	27750	AMD	05/20/2005	2005-7/66
R652-70-2300	Management of Bear Lake Sovereign Lands	27740	AMD	05/20/2005	2005-7/67
R652-120	Wildland Fire	27843	5YR	04/28/2005	2005-10/53
<u>Water Rights</u>					
R655-3	Reports of Water Right Conveyance	27690	5YR	02/01/2005	2005-4/54
R655-4	Water Well Drillers	27392	AMD	01/12/2005	2004-18/30
R655-4	Water Well Drillers	27691	5YR	02/01/2005	2005-4/55
R655-4	Water Well Drillers	27475	NSC	02/01/2005	Not Printed
<u>Wildlife Resources</u>					
R657-5	Taking Big Game	27550	AMD	01/15/2005	2004-24/38
R657-12	Hunting and Fishing Accommodations for Disabled People	27721	AMD	04/15/2005	2005-6/24

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R657-13	Taking Fish and Crayfish	27432	CPR	01/03/2005	2004-22/66
R657-13	Taking Fish and Crayfish	27432	AMD	01/03/2005	2004-20/33
R657-15	Closure of Gunnison, Cub and Hat Islands	27863	5YR	05/05/2005	2005-11/99
R657-21	Cooperative Wildlife Management Units for Small Game and Waterfowl	27864	5YR	05/05/2005	2005-11/99
R657-33	Taking Bear	27649	AMD	03/04/2005	2005-3/36
R657-33-2	Definitions	27751	NSC	04/01/2005	Not Printed
R657-37	Cooperative Wildlife Management Units for Big Game	27551	AMD	01/15/2005	2004-24/45
R657-38	Dedicated Hunter Program	27552	AMD	01/15/2005	2004-24/48
R657-42-4	Surrenders	27553	AMD	01/15/2005	2004-24/53
R657-47	Trust Fund Permits	27639	REP	03/04/2005	2005-3/39
R657-47	Trust Fund Permits (5YR EXTENSION)	27637	NSC	03/04/2005	Not Printed
R657-55	Wildlife Convention Permits	27827	NEW	06/01/2005	2005-9/38

Professional Practices Advisory Commission

Administration

R686-100	Professional Practices Advisory Commission, Rules of Procedure: Complaints and Hearings	27542	NSC	01/01/2005	Not Printed
R686-103	Professional Practices and Conduct for Utah Educators	27737	NSC	04/01/2005	Not Printed

Public Safety

Driver License

R708-32	Uninsured Motorist Database	27877	5YR	05/10/2005	2005-11/100
R708-36	Disclosure of Personal Identifying Information in MVRs	27878	5YR	05/11/2005	2005-11/100
R708-37	Certification of Licensed Instructors of Commercial Driver Training Schools or Testing Only Schools to Administer Driving Skills Tests	27898	5YR	05/13/2005	2005-11/101
R708-40	Driving Simulators	27579	CPR	04/18/2005	2005-6/28
R708-40	Driving Simulators	27579	NEW	04/18/2005	2005-1/31
R708-41	Requirements for Acceptable Documentation	27808	EMR	04/11/2005	2005-9/74
R708-41	Requirements for Acceptable Documentation	27809	NEW	06/01/2005	2005-9/41

Fire Marshal

R710-3-3	Amendments and Additions	27654	AMD	03/04/2005	2005-3/42
R710-4-3	Amendments and Additions	27653	AMD	03/04/2005	2005-3/44
R710-6	Liquefied Petroleum Gas Rules	27573	AMD	01/19/2005	2004-24/54
R710-7-1	Adoption of Codes	27671	AMD	06/13/2005	2005-4/21
R710-8	Day Care Rules	27574	NSC	01/01/2005	Not Printed
R710-9-6	Amendments and Additions	27655	AMD	03/04/2005	2005-3/47
R710-9-6	Amendments and Additions	27754	AMD	05/04/2005	2005-7/68

Highway Patrol

R714-500	Chemical Analysis Standards and Training	27882	5YR	05/12/2005	2005-11/102
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Peace Officer Standards and Training

R728-205	Council Resolution of Public Safety Retirement Eligibility	28043	5YR	06/27/2005	Not Printed
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Public Service Commission

Administration

R746-200-6	Termination of Service	27587	AMD	02/25/2005	2005-1/32
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CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R746-341	Lifeline Rule	27821	AMD	06/20/2005	2005-9/42
R746-360-9	One-Time Distributions from the Fund	27302	CPR	01/04/2005	2004-23/54
R746-360-9	One-Time Distributions from the Fund	27302	AMD	01/04/2005	2004-15/59
R746-409-1	General Provisions	27527	NSC	01/01/2005	Not Printed

Regents (Board Of)

Administration

R765-604	New Century Scholarship	27663	5YR	01/19/2005	2005-4/56
R765-604	New Century Scholarship	27666	AMD	03/22/2005	2005-4/22
R765-626	Lender-of-Last-Resort Program	27841	5YR	04/26/2005	2005-10/53

School and Institutional Trust Lands

Administration

R850-20	Mineral Resources	27611	REP	04/01/2005	2005-2/50
R850-21	Oil, Gas and Hydrocarbon Resources	27612	NEW	04/01/2005	2005-2/58
R850-21	Oil, Gas and Hydrocarbon Resources	27813	AMD	06/01/2005	2005-9/46
R850-22	Bituminous-Asphaltic Sands and Oil Shale Resources	27613	NEW	04/01/2005	2005-2/65
R850-23	Sand, Gravel and Cinders Permits	27609	NEW	04/01/2005	2005-2/72
R850-24	General Provisions: Mineral and Material Resources, Mineral Leases and Material Permits	27607	NEW	04/01/2005	2005-2/76
R850-24-200	Insurance Requirements	27814	AMD	06/01/2005	2005-9/49
R850-25	Mineral Leases and Materials Permits	27606	NEW	04/01/2005	2005-2/81
R850-26	Coal Leases	27604	NEW	04/01/2005	2005-2/84
R850-27	Geothermal Steam	27601	NEW	04/01/2005	2005-2/86
R850-50	Range Management	27811	AMD	06/01/2005	2005-9/49
R850-130	Materials Permits	27602	REP	04/01/2005	2005-2/89

Tax Commission

Auditing

R865-9I-21	Return By Partnership Pursuant to Utah Code Ann. Section 59-10-507	27804	AMD	06/08/2005	2005-9/51
R865-16R	Severance Tax	27739	5YR	03/08/2005	2005-7/77
R865-19S-20	Basis for Reporting Tax Pursuant to Utah Code Ann. Section 59-12-107	27819	AMD	07/01/2005	2005-9/52
R865-19S-32	Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-103	27820	AMD	07/01/2005	2005-9/54
R865-19S-51	Fabrication and Installation Labor in Connection With Retail Sales of Tangible Personal Property Pursuant to Utah Code Ann. Section 59-12-103	27822	AMD	07/01/2005	2005-9/55
R865-19S-52	Federal, State and Local Taxes Pursuant to Utah Code Ann. Section 59-12-102	27825	AMD	07/01/2005	2005-9/56
R865-19S-60	Sales of Machinery, Fixtures and Supplies to Manufacturers, Businessmen and Others Pursuant to Utah Code Ann. Section 59-12-103	27826	AMD	07/01/2005	2005-9/56
R865-19S-68	Premiums, Gifts, Rebates, and Coupons Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103	27828	AMD	07/01/2005	2005-9/57
R865-19S-71	Transportation Charges in Connection With the Sale of Tangible Personal Property Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104	27831	AMD	07/01/2005	2005-9/58

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R865-19S-85	Sales and Use Tax Exemptions for New or Expanding Operations and Normal Operating Replacements Pursuant to Utah Code Ann. Section 59-12-104	27832	AMD	07/01/2005	2005-9/59
R865-19S-90	Telephone Service Pursuant to Utah Code Ann. Section 59-12-103	27833	AMD	07/01/2005	2005-9/61
R865-19S-101	Application of Sales Tax to Fees Assessed in Conjunction with the Retail Sale of a Motor Vehicle Pursuant to Utah Code Ann. Section 59-12-103	27834	AMD	07/01/2005	2005-9/62
<u>Motor Vehicle</u>					
R873-22M-27	Issuance of Special Group License Plates Pursuant to Utah Code Ann. Sections 41-1a-408, 41-1a-409 and 41-1a-414	27803	AMD	06/08/2005	2005-9/63
Transportation					
<u>Motor Carrier, Ports of Entry</u>					
R912-6	Ports-of-Entry By-Pass Permit Provisions	27790	NEW	06/27/2005	2005-8/39
R912-16	Special Mobile Equipment	27954	5YR	06/01/2005	2005-12/89
<u>Operations, Construction</u>					
R916-4	Construction Manager/General Contractor Contracts	27846	NEW	06/27/2005	2005-10/46
Workforce Services					
<u>Employment Development</u>					
R986-100	Employment Support Programs	27661	AMD	04/07/2005	2005-4/24
R986-200-214	Assistance for Specified Relatives	27824	AMD	06/01/2005	2005-9/65
R986-500-501	Authority for Adoption Assistance (AA) and Other Applicable Rules	27491	AMD	01/01/2005	2004-21/31
R986-700	Child Care Assistance	27660	AMD	04/07/2005	2005-4/26
R986-700	Child Care Assistance	27830	AMD	07/01/2005	2005-9/67
<u>Workforce Information and Payment Services</u>					
R994-201	Definition of Terms in Employment Security Act	27730	NSC	04/01/2005	Not Printed
R994-204	Included Employment	27789	5YR	04/01/2005	2005-8/59
R994-205	Exempt Employment	27791	5YR	04/01/2005	2005-8/59
R994-206	Agricultural Labor	27796	5YR	04/01/2005	2005-8/60
R994-304	Special Provisions Regarding Transfers of Unemployment Experience and Assigning Rates	27823	NEW	06/01/2005	2005-9/69
R994-401	Payment of Benefits	27728	NSC	04/01/2005	Not Printed
R994-403	Claim for Benefits	27729	NSC	04/01/2005	Not Printed

RULES INDEX - BY KEYWORD (SUBJECT)

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	

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<u>abortion</u>					
Health, Health Care Financing, Coverage and Reimbursement Policy	27582	R414-1B	NSC	02/01/2005	Not Printed
<u>acceptable documentation</u>					
Public Safety, Driver License	27809	R708-41	NEW	06/01/2005	2005-9/41
	27808	R708-41	EMR	04/11/2005	2005-9/74
<u>accountants</u>					
Commerce, Occupational and Professional Licensing	27835	R156-26a	AMD	06/21/2005	2005-10/12
<u>accreditation</u>					
Education, Administration	27705	R277-410	AMD	04/01/2005	2005-5/8
	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
<u>adjudicative proceedings</u>					
Commerce, Administration	27636	R151-46b	AMD	02/15/2005	2005-2/32
<u>administrative procedure</u>					
Natural Resources, Forestry, Fire and State Lands	27750	R652-70-1900	AMD	05/20/2005	2005-7/66
<u>administrative procedures</u>					
Commerce, Administration	27636	R151-46b	AMD	02/15/2005	2005-2/32
Environmental Quality, Drinking Water	27912	R309-100	5YR	05/16/2005	2005-11/90
	27908	R309-115	5YR	05/16/2005	2005-11/92
	27909	R309-150	5YR	05/16/2005	2005-11/92
	27906	R309-300	5YR	05/16/2005	2005-11/96
	27916	R309-405	5YR	05/16/2005	2005-11/97
	27781	R309-405	NSC	05/16/2005	Not Printed
Natural Resources, Forestry, Fire and State Lands	27740	R652-70-2300	AMD	05/20/2005	2005-7/67
	27843	R652-120	5YR	04/28/2005	2005-10/53
School and Institutional Trust Lands, Administration	27611	R850-20	REP	04/01/2005	2005-2/50
	27813	R850-21	AMD	06/01/2005	2005-9/46
	27612	R850-21	NEW	04/01/2005	2005-2/58
	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
	27811	R850-50	AMD	06/01/2005	2005-9/49
	27602	R850-130	REP	04/01/2005	2005-2/89
<u>adoption assistance</u>					
Workforce Services, Employment Development	27491	R986-500-501	AMD	01/01/2005	2004-21/31

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<u>adult education</u> Education, Administration	27592	R277-733	AMD	02/01/2005	2005-1/10
<u>advertising</u> Labor Commission, Antidiscrimination and Labor, Antidiscrimination	28004	R606-4	5YR	06/08/2005	2005-13/56
<u>aesthetics</u> Capitol Preservation Board (State), Administration	27631	R131-8	NEW	03/03/2005	2005-2/24
<u>air pollution</u> Environmental Quality, Air Quality	27429	R307-110-11	CPR	03/04/2005	2005-3/52
	27429	R307-110-11	AMD	03/04/2005	2004-19/37
	27343	R307-110-12	CPR	01/04/2005	2004-23/53
	27343	R307-110-12	AMD	01/04/2005	2004-17/12
	27665	R307-210	AMD	04/19/2005	2005-4/17
<u>air travel</u> Administrative Services, Finance	27848	R25-7	AMD	07/01/2005	2005-10/7
<u>aircraft</u> Tax Commission, Motor Vehicle	27803	R873-22M-27	AMD	06/08/2005	2005-9/63
<u>alarm company</u> Commerce, Occupational and Professional Licensing	28048	R156-55d	5YR	06/28/2005	Not Printed
<u>alcohol</u> Public Safety, Highway Patrol	27882	R714-500	5YR	05/12/2005	2005-11/102
<u>alcoholic beverages</u> Alcoholic Beverage Control, Administration	27725	R81-5-5	AMD	05/01/2005	2005-6/3
	27726	R81-5-14	AMD	05/01/2005	2005-6/4
	27727	R81-5-17	AMD	05/01/2005	2005-6/5
<u>alternative onsite wastewater systems</u> Environmental Quality, Water Quality	27699	R317-4	5YR	02/10/2005	2005-5/30
<u>annuity insurance filings</u> Insurance, Administration	27717	R590-227-3	AMD	04/28/2005	2005-6/22
<u>annuity replacement</u> Insurance, Administration	27829	R590-93	R&R	06/08/2005	2005-9/12
<u>aquaculture</u> Agriculture and Food, Animal Industry	27696	R58-17	5YR	02/03/2005	2005-5/28
<u>architects</u> Administrative Services, Facilities Construction and Management	27605	R23-2	AMD	03/15/2005	2005-2/7
Capitol Preservation Board (State), Administration	27711	R131-1	5YR	02/16/2005	2005-6/33
<u>architecture</u> Capitol Preservation Board (State), Administration	27631	R131-8	NEW	03/03/2005	2005-2/24

<u>KEYWORD AGENCY</u>	<u>FILE NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE DATE</u>	<u>BULLETIN ISSUE/PAGE</u>
<u>art</u> Capitol Preservation Board (State), Administration	27632	R131-9	NEW	03/03/2005	2005-2/26
<u>assisted living facilities</u> Public Safety, Fire Marshal	27654	R710-3-3	AMD	03/04/2005	2005-3/42
<u>backflow assembly tester</u> Environmental Quality, Drinking Water	27780	R309-305	NSC	05/16/2005	Not Printed
	27617	R309-305	NSC	02/01/2005	Not Printed
	27915	R309-305	5YR	05/16/2005	2005-11/96
<u>banking law</u> Money Management Council, Administration	27689	R628-11	AMD	03/22/2005	2005-4/18
<u>bear</u> Natural Resources, Wildlife Resources	27649	R657-33	AMD	03/04/2005	2005-3/36
	27751	R657-33-2	NSC	04/01/2005	Not Printed
<u>behavior</u> Human Services, Services for People with Disabilities	27724	R539-4	NEW	05/03/2005	2005-6/16
<u>benefits</u> Community and Economic Development, Community Development, Community Services	27420	R202-207-702	AMD	01/12/2005	2004-19/27
Workforce Services, Workforce Information and Payment Services	27728	R994-401	NSC	04/01/2005	Not Printed
<u>big game seasons</u> Natural Resources, Wildlife Resources	27550	R657-5	AMD	01/15/2005	2004-24/38
<u>birds</u> Natural Resources, Wildlife Resources	27863	R657-15	5YR	05/05/2005	2005-11/99
<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
	27561	R651-206	AMD	01/15/2005	2004-24/29
	27664	R651-206	NSC	02/01/2005	Not Printed
	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

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<u>bonding requirements</u> Human Services, Recovery Services	27881	R527-394	5YR	05/12/2005	2005-11/98
<u>brachytherapy</u> Environmental Quality, Radiation Control	27748	R313-32	AMD	05/13/2005	2005-7/38
<u>breath testing</u> Public Safety, Highway Patrol	27882	R714-500	5YR	05/12/2005	2005-11/102
<u>broad scope</u> Environmental Quality, Radiation Control	27747	R313-22	AMD	05/13/2005	2005-7/36
<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>burglar alarms</u> Commerce, Occupational and Professional Licensing	28048	R156-55d	5YR	06/28/2005	Not Printed
<u>burns</u> Natural Resources, Forestry, Fire and State Lands	27843	R652-120	5YR	04/28/2005	2005-10/53
<u>capitol-preservation</u> Capitol Preservation Board (State), Administration	27711	R131-1	5YR	02/16/2005	2005-6/33
<u>care receiver</u> Human Services, Aging and Adult Services	28039	R510-401	5YR	06/22/2005	Not Printed
<u>caregiver</u> Human Services, Aging and Adult Services	28039	R510-401	5YR	06/22/2005	Not Printed
<u>cash management</u> Money Management Council, Administration	27743	R628-15	NEW	05/05/2005	2005-7/60
<u>certification</u> Labor Commission, Safety	27616	R616-2-3	AMD	03/07/2005	2005-2/49
	27590	R616-3-3	AMD	02/01/2005	2005-1/30
<u>charities</u> Tax Commission, Auditing	27819	R865-19S-20	AMD	07/01/2005	2005-9/52
	27820	R865-19S-32	AMD	07/01/2005	2005-9/54
	27822	R865-19S-51	AMD	07/01/2005	2005-9/55
	27825	R865-19S-52	AMD	07/01/2005	2005-9/56
	27826	R865-19S-60	AMD	07/01/2005	2005-9/56
	27828	R865-19S-68	AMD	07/01/2005	2005-9/57
	27831	R865-19S-71	AMD	07/01/2005	2005-9/58
	27832	R865-19S-85	AMD	07/01/2005	2005-9/59

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	27834	R865-19S-101	AMD	07/01/2005	2005-9/62
<u>charities tax exemptions</u>					
Tax Commission, Auditing	27833	R865-19S-90	AMD	07/01/2005	2005-9/61
<u>child care</u>					
Workforce Services, Employment Development	27660	R986-700	AMD	04/07/2005	2005-4/26
	27830	R986-700	AMD	07/01/2005	2005-9/67
<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
	27881	R527-394	5YR	05/12/2005	2005-11/98
	27641	R527-475	5YR	01/06/2005	2005-3/59
<u>child welfare</u>					
Administrative Services, Child Welfare Parental Defense (Office of)	27518	R19-1	CPR	05/13/2005	2005-2/94
	27518	R19-1	NEW	05/13/2005	2004-22/9
<u>cinders</u>					
School and Institutional Trust Lands, Administration	27609	R850-23	NEW	04/01/2005	2005-2/72
<u>coal</u>					
School and Institutional Trust Lands, Administration	27611	R850-20	REP	04/01/2005	2005-2/50
	27604	R850-26	NEW	04/01/2005	2005-2/84
<u>coal mines</u>					
Natural Resources, Oil, Gas and Mining; Coal	27778	R645-105	5YR	03/25/2005	2005-8/58
<u>coal mining</u>					
Natural Resources, Oil, Gas and Mining; Coal	27779	R645-400	5YR	03/25/2005	2005-8/58
<u>communicable diseases</u>					
Health, Epidemiology and Laboratory Services, Epidemiology	27496	R386-702	AMD	05/16/2005	2004-21/13
	27496	R386-702	CPR	05/16/2005	2005-3/53
<u>compliance determinations</u>					
Environmental Quality, Drinking Water	27917	R309-205	5YR	05/16/2005	2005-11/93
	27918	R309-210	5YR	05/16/2005	2005-11/94
	27910	R309-215	5YR	05/16/2005	2005-11/94
<u>conduct</u>					
Commerce, Real Estate	27788	R162-107	AMD	05/25/2005	2005-8/14
Professional Practices Advisory Commission, Administration	27542	R686-100	NSC	01/01/2005	Not Printed
<u>congregate meals</u>					
Human Services, Aging and Adult Services	28040	R510-104	5YR	06/22/2005	Not Printed

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<u>consent</u> Health, Epidemiology and Laboratory Services, Epidemiology	27934	R386-800	5YR	05/24/2005	2005-12/89
<u>conservation</u> Natural Resources, Wildlife Resources	27863	R657-15	5YR	05/05/2005	2005-11/99
<u>construction</u> Administrative Services, Facilities Construction and Management	27610	R23-4	AMD	03/15/2005	2005-2/10
Transportation, Operations, Construction	27846	R916-4	NEW	06/27/2005	2005-10/46
<u>construction contracts</u> Labor Commission, Antidiscrimination and Labor, Antidiscrimination	28003	R606-3	5YR	06/08/2005	2005-13/56
<u>construction disputes</u> Administrative Services, Facilities Construction and Management	27610	R23-4	AMD	03/15/2005	2005-2/10
<u>consumer confidence report</u> Environmental Quality, Drinking Water	27905	R309-225	5YR	05/16/2005	2005-11/95
<u>consumer hearing panel</u> Human Services, Child and Family Services	27883	R512-75	5YR	05/12/2005	2005-11/98
<u>contamination</u> Environmental Quality, Radiation Control	27744	R313-15	AMD	05/13/2005	2005-7/33
<u>continuing professional education</u> Commerce, Occupational and Professional Licensing	27835	R156-26a	AMD	06/21/2005	2005-10/12
<u>contractors</u> Commerce, Occupational and Professional Licensing	27752	R156-38	5YR	03/15/2005	2005-7/75
	27489	R156-56	AMD	01/01/2005	2004-21/6
	27490	R156-56-704	AMD	01/01/2005	2004-21/11
Labor Commission, Antidiscrimination and Labor, Antidiscrimination	28003	R606-3	5YR	06/08/2005	2005-13/56
<u>contracts</u> Administrative Services, Facilities Construction and Management	27603	R23-1	AMD	03/15/2005	2005-2/2
	27610	R23-4	AMD	03/15/2005	2005-2/10
Transportation, Operations, Construction	27846	R916-4	NEW	06/27/2005	2005-10/46
<u>conveyance</u> Natural Resources, Water Rights	27690	R655-3	5YR	02/01/2005	2005-4/54
<u>cooperative wildlife management unit</u> Natural Resources, Wildlife Resources	27551	R657-37	AMD	01/15/2005	2004-24/45
<u>cost sharing</u> Health, Health Care Financing, Coverage and Reimbursement Policy	27588	R414-200	AMD	02/01/2005	2005-1/24
<u>counselors</u> Commerce, Occupational and Professional Licensing	27749	R156-60c	5YR	03/14/2005	2005-7/75

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<u>CPB</u>					
Capitol Preservation Board (State), Administration	27631	R131-8	NEW	03/03/2005	2005-2/24
	27632	R131-9	NEW	03/03/2005	2005-2/26
<u>credit insurance filings</u>					
Insurance, Administration	27718	R590-228-3	AMD	04/28/2005	2005-6/23
<u>cross connection control</u>					
Environmental Quality, Drinking Water	27780	R309-305	NSC	05/16/2005	Not Printed
	27617	R309-305	NSC	02/01/2005	Not Printed
	27915	R309-305	5YR	05/16/2005	2005-11/96
<u>curricula</u>					
Education, Administration	27710	R277-705-6	AMD	04/01/2005	2005-5/19
	27662	R277-713	AMD	03/21/2005	2005-4/14
<u>day care</u>					
Public Safety, Fire Marshal	27574	R710-8	NSC	01/01/2005	Not Printed
<u>decommissioning</u>					
Environmental Quality, Radiation Control	27747	R313-22	AMD	05/13/2005	2005-7/36
<u>decontamination</u>					
Health, Epidemiology and Laboratory Services, Environmental Services	27650	R392-600	NEW	05/02/2005	2005-3/19
<u>definitions</u>					
Administrative Services, Fleet Operations	27546	R27-1-2	AMD	01/10/2005	2004-23/3
Environmental Quality, Drinking Water	27911	R309-110	5YR	05/16/2005	2005-11/91
Environmental Quality, Radiation Control	27746	R313-12	AMD	05/13/2005	2005-7/29
Workforce Services, Workforce Information and Payment Services	27730	R994-201	NSC	04/01/2005	Not Printed
<u>design</u>					
Administrative Services, Facilities Construction and Management	27615	R23-3	AMD	03/15/2005	2005-2/9
<u>disabilities</u>					
Human Services, Services for People with Disabilities	27801	R539-5	NEW	05/17/2005	2005-8/33
	28037	R539-7	EMR	06/20/2005	Not Printed
<u>disability</u>					
Human Services, Services for People with Disabilities	27568	R539-1	AMD	01/25/2005	2004-24/17
<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
	27753	R539-4	REP	05/03/2005	2005-7/58
	27802	R539-5	REP	05/17/2005	2005-8/31
	27795	R539-8	REP	05/17/2005	2005-8/35
Natural Resources, Wildlife Resources	27721	R657-12	AMD	04/15/2005	2005-6/24

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<u>disasters</u> Education, Administration	27539	R277-400	NSC	01/01/2005	Not Printed
<u>discharge permits</u> Environmental Quality, Water Quality	27657	R317-8-3	AMD	04/20/2005	2005-3/12
<u>disciplinary actions</u> Professional Practices Advisory Commission, Administration	27737	R686-103	NSC	04/01/2005	Not Printed
<u>discrimination</u> Labor Commission, Antidiscrimination and Labor, Antidiscrimination	28003	R606-3	5YR	06/08/2005	2005-13/56
	28004	R606-4	5YR	06/08/2005	2005-13/56
	28005	R606-5	5YR	06/08/2005	2005-13/57
	28002	R606-6	5YR	06/08/2005	2005-13/57
<u>disease control</u> Agriculture and Food, Animal Industry	27570	R58-1	AMD	01/18/2005	2004-24/5
	27687	R58-1-7	AMD	03/18/2005	2005-4/8
	27694	R58-21	5YR	02/03/2005	2005-5/29
<u>disinfection monitoring</u> Environmental Quality, Drinking Water	27910	R309-215	5YR	05/16/2005	2005-11/94
<u>dispute</u> Administrative Services, Facilities Construction and Management	27614	R23-26	NEW	03/15/2005	2005-2/12
<u>distribution system monitoring</u> Environmental Quality, Drinking Water	27918	R309-210	5YR	05/16/2005	2005-11/94
<u>diversion programs</u> Commerce, Occupational and Professional Licensing	27499	R156-1	NSC	01/01/2005	Not Printed
<u>drinking water</u> Environmental Quality, Drinking Water	27912	R309-100	5YR	05/16/2005	2005-11/90
	27907	R309-105	5YR	05/16/2005	2005-11/91
	27911	R309-110	5YR	05/16/2005	2005-11/91
	27908	R309-115	5YR	05/16/2005	2005-11/92
	27909	R309-150	5YR	05/16/2005	2005-11/92
	27913	R309-200	5YR	05/16/2005	2005-11/93
	27917	R309-205	5YR	05/16/2005	2005-11/93
	27918	R309-210	5YR	05/16/2005	2005-11/94
	27910	R309-215	5YR	05/16/2005	2005-11/94
	27914	R309-220	5YR	05/16/2005	2005-11/95
	27905	R309-225	5YR	05/16/2005	2005-11/95
	27906	R309-300	5YR	05/16/2005	2005-11/96
	27780	R309-305	NSC	05/16/2005	Not Printed
	27617	R309-305	NSC	02/01/2005	Not Printed
	27915	R309-305	5YR	05/16/2005	2005-11/96
	27781	R309-405	NSC	05/16/2005	Not Printed

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	27916	R309-405	5YR	05/16/2005	2005-11/97
	27816	R309-600	5YR	04/14/2005	2005-9/76
	27815	R309-605	5YR	04/14/2005	2005-9/76
<u>driver education</u> Education, Administration	27520	R277-746	NSC	01/01/2005	Not Printed
<u>driver license</u> Public Safety, Driver License	27878	R708-36	5YR	05/11/2005	2005-11/100
<u>driver training</u> Public Safety, Driver License	27898	R708-37	5YR	05/13/2005	2005-11/101
<u>driving simulators</u> Public Safety, Driver License	27579	R708-40	CPR	04/18/2005	2005-6/28
	27579	R708-40	NEW	04/18/2005	2005-1/31
<u>dual enrollment</u> Education, Administration	27800	R277-438	AMD	05/19/2005	2005-8/19
<u>education</u> Education, Administration	27798	R277-407	AMD	05/19/2005	2005-8/15
	27702	R277-422	NSC	03/01/2005	Not Printed
<u>education finance</u> Education, Administration	27798	R277-407	AMD	05/19/2005	2005-8/15
<u>educational program evaluations</u> Education, Administration	27722	R277-501	5YR	02/23/2005	2005-6/35
<u>educational testing</u> Education, Administration	27547	R277-473	AMD	01/04/2005	2004-23/43
	27872	R277-473	5YR	05/09/2005	2005-11/90
<u>educational tuition</u> Education, Administration	27798	R277-407	AMD	05/19/2005	2005-8/15
<u>educator license renewal</u> Education, Administration	27722	R277-501	5YR	02/23/2005	2005-6/35
<u>educators</u> Professional Practices Advisory Commission, Administration	27737	R686-103	NSC	04/01/2005	Not Printed
<u>effluent standards</u> Environmental Quality, Water Quality	27659	R317-1	AMD	04/20/2005	2005-3/5
<u>elderly</u> Human Services, Aging and Adult Services	28040	R510-104	5YR	06/22/2005	Not Printed
	28039	R510-401	5YR	06/22/2005	Not Printed
<u>electronic high school</u> Education, Administration	27507	R277-725	NSC	01/01/2005	Not Printed
<u>electronic preliminary lien filing</u> Commerce, Occupational and Professional Licensing	27734	R156-38b	NEW	04/18/2005	2005-6/6

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<u>elevators</u> Labor Commission, Safety	27590	R616-3-3	AMD	02/01/2005	2005-1/30
<u>emergency medical services</u> Health, Health Systems Improvement, Emergency Medical Services	27519	R426-12	AMD	02/01/2005	2004-22/26
	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
<u>employment</u> Labor Commission, Antidiscrimination and Labor, Antidiscrimination	28004	R606-4	5YR	06/08/2005	2005-13/56
	28005	R606-5	5YR	06/08/2005	2005-13/57
<u>employment agencies</u> Labor Commission, Antidiscrimination and Labor, Antidiscrimination	28005	R606-5	5YR	06/08/2005	2005-13/57
<u>employment support procedures</u> Workforce Services, Employment Development	27661	R986-100	AMD	04/07/2005	2005-4/24
<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>endangered species</u> Natural Resources, Forestry, Fire and State Lands	27843	R652-120	5YR	04/28/2005	2005-10/53
<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 Commerce, Occupational and Professional Licensing	27605	R23-2	AMD	03/15/2005	2005-2/7
	27711	R131-1	5YR	02/16/2005	2005-6/33
	27698	R156-22	AMD	04/04/2005	2005-5/2
<u>enrollment options</u> Education, Administration	27799	R277-437	AMD	05/19/2005	2005-8/17
<u>enterprise</u> Tax Commission, Auditing	27804	R865-9I-21	AMD	06/08/2005	2005-9/51
<u>environmental health</u> Environmental Quality, Drinking Water	27816	R309-600	5YR	04/14/2005	2005-9/76

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	27815	R309-605	5YR	04/14/2005	2005-9/76
<u>environmental protection</u>					
Environmental Quality, Drinking Water	27912	R309-100	5YR	05/16/2005	2005-11/90
	27909	R309-150	5YR	05/16/2005	2005-11/92
	27906	R309-300	5YR	05/16/2005	2005-11/96
	27916	R309-405	5YR	05/16/2005	2005-11/97
	27781	R309-405	NSC	05/16/2005	Not Printed
<u>exemptions</u>					
Environmental Quality, Radiation Control	27746	R313-12	AMD	05/13/2005	2005-7/29
	27745	R313-19	AMD	05/13/2005	2005-7/34
<u>facilities use</u>					
Capitol Preservation Board (State), Administration	27712	R131-2	5YR	02/16/2005	2005-6/33
<u>family employment program</u>					
Workforce Services, Employment Development	27824	R986-200-214	AMD	06/01/2005	2005-9/65
<u>fertilizers</u>					
Agriculture and Food, Plant Industry	27645	R68-3	5YR	01/07/2005	2005-3/58
<u>filing deadlines</u>					
Workforce Services, Workforce Information and Payment Services	27729	R994-403	NSC	04/01/2005	Not Printed
<u>finance</u>					
Education, Administration	27702	R277-422	NSC	03/01/2005	Not Printed
<u>financial information</u>					
Human Services, Recovery Services	27640	R527-10	5YR	01/06/2005	2005-3/58
<u>financial institutions</u>					
Money Management Council, Administration	27689	R628-11	AMD	03/22/2005	2005-4/18
<u>fire prevention</u>					
Public Safety, Fire Marshal	27653	R710-4-3	AMD	03/04/2005	2005-3/44
	27671	R710-7-1	AMD	06/13/2005	2005-4/21
	27574	R710-8	NSC	01/01/2005	Not Printed
	27655	R710-9-6	AMD	03/04/2005	2005-3/47
	27754	R710-9-6	AMD	05/04/2005	2005-7/68
<u>fish</u>					
Natural Resources, Wildlife Resources	27432	R657-13	AMD	01/03/2005	2004-20/33
	27432	R657-13	CPR	01/03/2005	2004-22/66
<u>fishing</u>					
Natural Resources, Wildlife Resources	27432	R657-13	CPR	01/03/2005	2004-22/66
	27432	R657-13	AMD	01/03/2005	2004-20/33
<u>fleet expansion</u>					
Administrative Services, Fleet Operations	27543	R27-4	AMD	01/10/2005	2004-23/5

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<u>fleet expansion vehicle replacement</u>					
Administrative Services, Fleet Operations	27594	R27-4-1	NSC	02/01/2005	Not Printed
<u>food inspection</u>					
Agriculture and Food, Animal Industry	27693	R58-10	5YR	02/03/2005	2005-5/28
Agriculture and Food, Regulatory Services	27514	R70-440	NSC	01/01/2005	Not Printed
	27628	R70-440-2	AMD	02/15/2005	2005-2/23
	27667	R70-440-2	NSC	03/01/2005	Not Printed
	27569	R70-540-14	AMD	03/18/2005	2004-24/7
<u>fuel dispensing</u>					
Administrative Services, Fleet Operations	27544	R27-6	AMD	01/10/2005	2004-23/7
<u>game laws</u>					
Natural Resources, Wildlife Resources	27550	R657-5	AMD	01/15/2005	2004-24/38
	27649	R657-33	AMD	03/04/2005	2005-3/36
	27751	R657-33-2	NSC	04/01/2005	Not Printed
<u>geothermal steam</u>					
School and Institutional Trust Lands, Administration	27601	R850-27	NEW	04/01/2005	2005-2/86
<u>government documents</u>					
Administrative Services, Records Committee	27621	R35-1a	NEW	03/08/2005	2005-2/17
	27700	R35-1a	NSC	04/01/2005	Not Printed
	27625	R35-2	AMD	03/04/2005	2005-2/18
	27622	R35-3	AMD	03/04/2005	2005-2/19
	27624	R35-4	AMD	03/04/2005	2005-2/20
	27623	R35-5	AMD	03/04/2005	2005-2/21
	27620	R35-6	AMD	03/04/2005	2005-2/22
Community and Economic Development, Community Development, Community Services	27420	R202-207-702	AMD	01/12/2005	2004-19/27
<u>government hearings</u>					
Commerce, Administration	27636	R151-46b	AMD	02/15/2005	2005-2/32
<u>gravel</u>					
School and Institutional Trust Lands, Administration	27609	R850-23	NEW	04/01/2005	2005-2/72
<u>grievance procedures</u>					
Human Services, Child and Family Services	27883	R512-75	5YR	05/12/2005	2005-11/98
<u>health effects</u>					
Environmental Quality, Drinking Water	27914	R309-220	5YR	05/16/2005	2005-11/95
<u>health facilities</u>					
Health, Health Systems Improvement, Licensing	27674	R432-7	5YR	01/28/2005	2005-4/47
	27675	R432-8	5YR	01/28/2005	2005-4/48
	27676	R432-9	5YR	01/28/2005	2005-4/48
	27677	R432-10	5YR	01/28/2005	2005-4/49
	27678	R432-11	5YR	01/28/2005	2005-4/49

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	27679	R432-12	5YR	01/28/2005	2005-4/50
	27680	R432-13	5YR	01/28/2005	2005-4/50
	27681	R432-14	5YR	01/28/2005	2005-4/51
	27682	R432-30	5YR	01/28/2005	2005-4/51
	27683	R432-270	5YR	01/31/2005	2005-4/52
	27692	R432-270-10	AMD	05/10/2005	2005-5/24
<u>health insurance</u>					
Human Services, Recovery Services	27640	R527-10	5YR	01/06/2005	2005-3/58
Insurance, Administration	27866	R590-172	5YR	05/05/2005	2005-11/98
	28028	R590-199	5YR	06/15/2005	2005-13/55
<u>hearings</u>					
Environmental Quality, Drinking Water	27908	R309-115	5YR	05/16/2005	2005-11/92
Professional Practices Advisory Commission, Administration	27542	R686-100	NSC	01/01/2005	Not Printed
<u>HEAT</u>					
Community and Economic Development, Community Development, Community Services	27418	R202-202-202	AMD	01/12/2005	2004-19/24
<u>higher education</u>					
Education, Administration	27662	R277-713	AMD	03/21/2005	2005-4/14
	27666	R765-604	AMD	03/22/2005	2005-4/22
	27663	R765-604	5YR	01/19/2005	2005-4/56
	27841	R765-626	5YR	04/26/2005	2005-10/53
<u>highways</u>					
Transportation, Operations, Construction	27846	R916-4	NEW	06/27/2005	2005-10/46
<u>historic preservation</u>					
Tax Commission, Auditing	27804	R865-91-21	AMD	06/08/2005	2005-9/51
<u>home-delivered meals</u>					
Human Services, Aging and Adult Services	28040	R510-104	5YR	06/22/2005	Not Printed
<u>hospitals</u>					
Health, Health Care Financing, Coverage and Reimbursement Policy	27582	R414-1B	NSC	02/01/2005	Not Printed
<u>human services</u>					
Human Services, Administration, Administrative Services, Licensing	27673	R501-18	5YR	01/27/2005	2005-4/52
	27839	R501-19	5YR	04/25/2005	2005-10/51
	27836	R501-20	5YR	04/21/2005	2005-10/51
	27837	R501-21	5YR	04/22/2005	2005-10/52
	27838	R501-22	5YR	04/22/2005	2005-10/52
Human Services, Services for People with Disabilities	27568	R539-1	AMD	01/25/2005	2004-24/17
<u>hunting</u>					
Natural Resources, Wildlife Resources	27552	R657-38	AMD	01/15/2005	2004-24/48
<u>illegal drug laboratories</u>					
Health, Epidemiology and Laboratory Services, Environmental Services	27650	R392-600	NEW	05/02/2005	2005-3/19

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<u>immunization data reporting</u> Health, Epidemiology and Laboratory Services, Epidemiology	27934	R386-800	5YR	05/24/2005	2005-12/89
<u>income eligibility</u> Community and Economic Development, Community Development, Community Services	27421	R202-203-324	AMD	01/12/2005	2004-19/25
	27419	R202-203-328	AMD	01/12/2005	2004-19/26
<u>income tax</u> Tax Commission, Auditing	27804	R865-9I-21	AMD	06/08/2005	2005-9/51
<u>independent contractor</u> Workforce Services, Workforce Information and Payment Services	27789	R994-204	5YR	04/01/2005	2005-8/59
<u>industrial waste</u> Environmental Quality, Water Quality	27659	R317-1	AMD	04/20/2005	2005-3/5
<u>inspections</u> Agriculture and Food, Animal Industry	27695	R58-22	5YR	02/03/2005	2005-5/29
Agriculture and Food, Plant Industry	27697	R68-20	5YR	02/04/2005	2005-5/30
Agriculture and Food, Regulatory Services	27523	R70-960-7	NSC	01/01/2005	Not Printed
Environmental Quality, Radiation Control	27746	R313-12	AMD	05/13/2005	2005-7/29
<u>insurance</u> Insurance, Administration	27715	R590-102-13	NSC	04/01/2005	Not Printed
	27785	R590-140	5YR	03/31/2005	2005-8/56
	27556	R590-147	R&R	02/10/2005	2004-24/21
	27719	R590-148-12	AMD	04/28/2005	2005-6/19
	27554	R590-163	REP	02/10/2005	2004-24/23
	28027	R590-171	5YR	06/14/2005	2005-13/54
	27558	R590-196	AMD	02/10/2005	2004-24/25
	27644	R590-196	5YR	01/07/2005	2005-3/60
<u>insurance companies</u> Insurance, Administration	27685	R590-128	5YR	01/31/2005	2005-4/53
<u>insurance law</u> Insurance, Administration	27684	R590-88	5YR	01/31/2005	2005-4/53
	27723	R590-99-4	NSC	04/01/2005	Not Printed
	27686	R590-132	5YR	01/31/2005	2005-4/54
	27784	R590-164	5YR	03/31/2005	2005-8/57
	27555	R590-174	REP	02/10/2005	2004-24/24
<u>intoxilyzer</u> Public Safety, Highway Patrol	27882	R714-500	5YR	05/12/2005	2005-11/102
<u>investigators</u> Commerce, Administration	27633	R151-1	NEW	02/15/2005	2005-2/29
<u>investment advisers</u> Money Management Council, Administration	27743	R628-15	NEW	05/05/2005	2005-7/60

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	27742	R628-19	R&R	05/05/2005	2005-7/64
<u>irradiator</u>					
Environmental Quality, Radiation Control	27738	R313-34	5YR	03/08/2005	2005-7/76
	27646	R313-34-1	NSC	02/01/2005	Not Printed
<u>IT bid committee</u>					
Governor, Planning and Budget, Chief Information Officer	27545	R365-101	NEW	03/09/2005	2004-23/45
<u>IT standards council</u>					
Governor, Planning and Budget, Chief Information Officer	27545	R365-101	NEW	03/09/2005	2004-23/45
<u>judicial conduct commission</u>					
Judicial Conduct Commission, Administration	27580	R595-1	REP	02/01/2005	2005-1/26
	27330	R595-1	NEW	02/01/2005	2004-17/18
	27330	R595-1	CPR	02/01/2005	2004-24/59
	27331	R595-2	CPR	02/01/2005	2004-24/60
	27331	R595-2	NEW	02/01/2005	2004-17/23
	27332	R595-3	NEW	02/01/2005	2004-17/24
	27332	R595-3	CPR	02/01/2005	2004-24/61
	27668	R595-3-10	NSC	02/01/2005	Not Printed
	27333	R595-4	NEW	02/01/2005	2004-17/26
	27333	R595-4	CPR	02/01/2005	2004-24/64
	27807	R595-4-2	AMD	06/02/2005	2005-9/37
<u>laboratories</u>					
Health, Epidemiology and Laboratory Services, Laboratory Improvement	27850	R444-14	AMD	07/01/2005	2005-10/26
<u>law</u>					
Public Safety, Fire Marshal	27754	R710-9-6	AMD	05/04/2005	2005-7/68
	27655	R710-9-6	AMD	03/04/2005	2005-3/47
<u>lease operations</u>					
School and Institutional Trust Lands, Administration	27607	R850-24	NEW	04/01/2005	2005-2/76
	27814	R850-24-200	AMD	06/01/2005	2005-9/49
<u>lease provisions</u>					
School and Institutional Trust Lands, Administration	27813	R850-21	AMD	06/01/2005	2005-9/46
	27612	R850-21	NEW	04/01/2005	2005-2/58
	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
<u>license</u>					
Environmental Quality, Radiation Control	27745	R313-19	AMD	05/13/2005	2005-7/34
<u>license plates</u>					
Tax Commission, Motor Vehicle	27803	R873-22M-27	AMD	06/08/2005	2005-9/63

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>licensing</u>					
Commerce, Occupational and Professional Licensing	27499	R156-1	NSC	01/01/2005	Not Printed
	27786	R156-17a	REP	05/17/2005	2005-8/2
	27529	R156-17b	CPR	05/17/2005	2005-8/43
	27529	R156-17b	CPR	05/17/2005	2005-4/31
	27529	R156-17b	NEW	05/17/2005	2004-23/20
	27835	R156-26a	AMD	06/21/2005	2005-10/12
	27600	R156-31b	AMD	02/17/2005	2005-2/36
	27714	R156-31b	NSC	04/01/2005	Not Printed
	27752	R156-38	5YR	03/15/2005	2005-7/75
	27548	R156-47b	CPR	03/07/2005	2005-3/51
	27548	R156-47b	AMD	03/07/2005	2004-24/7
	27435	R156-50	CPR	01/18/2005	2004-24/58
	27435	R156-50	AMD	01/18/2005	2004-20/12
	28048	R156-55d	5YR	06/28/2005	Not Printed
	27489	R156-56	AMD	01/01/2005	2004-21/6
	27490	R156-56-704	AMD	01/01/2005	2004-21/11
	27749	R156-60c	5YR	03/14/2005	2005-7/75
	27538	R156-61-502	AMD	01/04/2005	2004-23/40
	27533	R156-71-202	AMD	01/04/2005	2004-23/41
Commerce, Real Estate	27797	R162-102-1	AMD	05/25/2005	2005-8/12
Human Services, Administration, Administrative Services, Licensing	27673	R501-18	5YR	01/27/2005	2005-4/52
	27839	R501-19	5YR	04/25/2005	2005-10/51
	27836	R501-20	5YR	04/21/2005	2005-10/51
	27837	R501-21	5YR	04/22/2005	2005-10/52
	27838	R501-22	5YR	04/22/2005	2005-10/52
Natural Resources, Water Rights	27691	R655-4	5YR	02/01/2005	2005-4/55
	27475	R655-4	NSC	02/01/2005	Not Printed
	27392	R655-4	AMD	01/12/2005	2004-18/30
<u>liens</u>					
Commerce, Occupational and Professional Licensing	27752	R156-38	5YR	03/15/2005	2005-7/75
<u>life insurance</u>					
Insurance, Administration	27829	R590-93	R&R	06/08/2005	2005-9/12
<u>life insurance filing</u>					
Insurance, Administration	27716	R590-226-3	AMD	04/28/2005	2005-6/21
<u>lifeline rates</u>					
Public Service Commission, Administration	27821	R746-341	AMD	06/20/2005	2005-9/42
<u>liquefied petroleum gas</u>					
Public Safety, Fire Marshal	27573	R710-6	AMD	01/19/2005	2004-24/54
<u>livestock</u>					
Agriculture and Food, Animal Industry	27688	R58-7	5YR	02/01/2005	2005-4/47

<u>KEYWORD AGENCY</u>	<u>FILE NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE DATE</u>	<u>BULLETIN ISSUE/PAGE</u>
<u>loans</u>					
Agriculture and Food, Marketing and Conservation	27787	R65-10	5YR	03/31/2005	2005-8/56
<u>local health departments</u>					
Health, Administration	27571	R380-40	AMD	02/02/2005	2004-24/9
	27990	R380-40	5YR	06/06/2005	2005-13/52
<u>maintenance</u>					
Capitol Preservation Board (State), Administration	27631	R131-8	NEW	03/03/2005	2005-2/24
<u>massage therapy</u>					
Commerce, Occupational and Professional Licensing	27548	R156-47b	AMD	03/07/2005	2004-24/7
	27548	R156-47b	CPR	03/07/2005	2005-3/51
<u>material permit</u>					
School and Institutional Trust Lands, Administration	27607	R850-24	NEW	04/01/2005	2005-2/76
<u>material permits</u>					
School and Institutional Trust Lands, Administration	27814	R850-24-200	AMD	06/01/2005	2005-9/49
<u>materials handling</u>					
School and Institutional Trust Lands, Administration	27602	R850-130	REP	04/01/2005	2005-2/89
<u>Medicaid</u>					
Health, Health Care Financing, Coverage and Reimbursement Policy	27805	R414-1	AMD	06/03/2005	2005-9/6
	27582	R414-1B	NSC	02/01/2005	Not Printed
	27806	R414-7A	AMD	06/03/2005	2005-9/10
	27505	R414-7D	NEW	01/03/2005	2004-22/15
	27486	R414-10A-6	NSC	01/01/2005	Not Printed
	27733	R414-14	AMD	04/26/2005	2005-6/12
	27985	R414-19A	5YR	06/03/2005	2005-13/52
	27854	R414-31	AMD	06/15/2005	2005-10/19
	27986	R414-33	5YR	06/03/2005	2005-13/53
	27703	R414-33C	NEW	04/07/2005	2005-5/23
	27589	R414-34-6	AMD	02/01/2005	2005-1/21
	27591	R414-36-6	AMD	02/01/2005	2005-1/22
	27741	R414-61	5YR	03/11/2005	2005-7/77
	27586	R414-61-2	AMD	02/01/2005	2005-1/23
	27549	R414-63	AMD	01/26/2005	2004-24/13
	27557	R414-90	AMD	01/19/2005	2004-24/15
	27588	R414-200	AMD	02/01/2005	2005-1/24
	27629	R414-507	NEW	02/15/2005	2005-2/42
<u>medical examiner</u>					
Health, Medical Examiner	27988	R448-10	5YR	06/06/2005	2005-13/53
	27989	R448-20	5YR	06/06/2005	2005-13/54

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<u>mental health</u>					
Commerce, Occupational and Professional Licensing	27749	R156-60c	5YR	03/14/2005	2005-7/75
Human Services, Substance Abuse and Mental Health	27638	R523-1	AMD	03/07/2005	2005-3/28
<u>mineral classification</u>					
School and Institutional Trust Lands, Administration	27606	R850-25	NEW	04/01/2005	2005-2/81
<u>mineral lease</u>					
School and Institutional Trust Lands, Administration	27607	R850-24	NEW	04/01/2005	2005-2/76
<u>mineral leases</u>					
School and Institutional Trust Lands, Administration	27814	R850-24-200	AMD	06/01/2005	2005-9/49
<u>mineral resources</u>					
School and Institutional Trust Lands, Administration	27607	R850-24	NEW	04/01/2005	2005-2/76
	27814	R850-24-200	AMD	06/01/2005	2005-9/49
Tax Commission, Auditing	27739	R865-16R	5YR	03/08/2005	2005-7/77
<u>motor carrier</u>					
Transportation, Motor Carrier, Ports of Entry	27790	R912-6	NEW	06/27/2005	2005-8/39
<u>motor vehicle record</u>					
Public Safety, Driver License	27878	R708-36	5YR	05/11/2005	2005-11/100
<u>motor vehicles</u>					
Tax Commission, Motor Vehicle	27803	R873-22M-27	AMD	06/08/2005	2005-9/63
<u>naturopathic physician</u>					
Commerce, Occupational and Professional Licensing	27533	R156-71-202	AMD	01/04/2005	2004-23/41
<u>naturopaths</u>					
Commerce, Occupational and Professional Licensing	27533	R156-71-202	AMD	01/04/2005	2004-23/41
<u>new source review</u>					
Environmental Quality, Air Quality	27665	R307-210	AMD	04/19/2005	2005-4/17
<u>next-of-kin</u>					
Health, Medical Examiner	27989	R448-20	5YR	06/06/2005	2005-13/54
<u>non-traditional</u>					
Health, Health Care Financing, Coverage and Reimbursement Policy	27588	R414-200	AMD	02/01/2005	2005-1/24
<u>nonpublic schools</u>					
Education, Administration	27705	R277-410	AMD	04/01/2005	2005-5/8
<u>notice of commencement</u>					
Commerce, Occupational and Professional Licensing	27734	R156-38b	NEW	04/18/2005	2005-6/6
<u>notice of completion</u>					
Commerce, Occupational and Professional Licensing	27734	R156-38b	NEW	04/18/2005	2005-6/6

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<u>nuclear medicine</u>					
Environmental Quality, Radiation Control	27748	R313-32	AMD	05/13/2005	2005-7/38
<u>nurses</u>					
Commerce, Occupational and Professional Licensing	27600	R156-31b	AMD	02/17/2005	2005-2/36
	27714	R156-31b	NSC	04/01/2005	Not Printed
<u>nutrition</u>					
Human Services, Aging and Adult Services	28040	R510-104	5YR	06/22/2005	Not Printed
<u>oath</u>					
Commerce, Administration	27633	R151-1	NEW	02/15/2005	2005-2/29
<u>occupational licensing</u>					
Commerce, Occupational and Professional Licensing	27499	R156-1	NSC	01/01/2005	Not Printed
<u>off-highway vehicles</u>					
Natural Resources, Parks and Recreation	27566	R651-401	AMD	01/15/2005	2004-24/37
<u>oil gas and hydrocarbons</u>					
School and Institutional Trust Lands, Administration	27813	R850-21	AMD	06/01/2005	2005-9/46
	27612	R850-21	NEW	04/01/2005	2005-2/58
<u>oil shale</u>					
School and Institutional Trust Lands, Administration	27613	R850-22	NEW	04/01/2005	2005-2/65
<u>onsite wastewater systems</u>					
Environmental Quality, Water Quality	27699	R317-4	5YR	02/10/2005	2005-5/30
<u>opening and closing dates</u>					
Community and Economic Development, Community Development, Community Services	27418	R202-202-202	AMD	01/12/2005	2004-19/24
<u>operations</u>					
School and Institutional Trust Lands, Administration	27813	R850-21	AMD	06/01/2005	2005-9/46
	27612	R850-21	NEW	04/01/2005	2005-2/58
<u>operator certification</u>					
Environmental Quality, Water Quality	27656	R317-10-6	AMD	04/20/2005	2005-3/18
Public Safety, Highway Patrol	27882	R714-500	5YR	05/12/2005	2005-11/102
<u>ownership</u>					
Natural Resources, Water Rights	27690	R655-3	5YR	02/01/2005	2005-4/54
<u>ozone</u>					
Environmental Quality, Air Quality	27429	R307-110-11	AMD	03/04/2005	2004-19/37
	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
<u>parental defense</u>					
Administrative Services, Child Welfare Parental Defense (Office of)	27518	R19-1	NEW	05/13/2005	2004-22/9

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	27518	R19-1	CPR	05/13/2005	2005-2/94
<u>payment determination</u>					
Community and Economic Development, Community Development, Community Services	27421	R202-203-324	AMD	01/12/2005	2004-19/25
	27419	R202-203-328	AMD	01/12/2005	2004-19/26
<u>peace officers*</u>					
Public Safety, Peace Officer Standards and Training	28043	R728-205	5YR	06/27/2005	Not Printed
<u>peer review</u>					
Commerce, Occupational and Professional Licensing	27835	R156-26a	AMD	06/21/2005	2005-10/12
<u>penalties</u>					
Environmental Quality, Drinking Water	27781	R309-405	NSC	05/16/2005	Not Printed
	27916	R309-405	5YR	05/16/2005	2005-11/97
<u>people with disabilities</u>					
Human Services, Services for People with Disabilities	27626	R539-2	NEW	03/12/2005	2005-2/45
	27792	R539-2-6	AMD	05/17/2005	2005-8/29
	27627	R539-3	NEW	03/12/2005	2005-2/47
	27793	R539-3-10	AMD	05/17/2005	2005-8/30
	27724	R539-4	NEW	05/03/2005	2005-6/16
<u>per diem allowances</u>					
Administrative Services, Finance	27848	R25-7	AMD	07/01/2005	2005-10/7
<u>performance standards</u>					
Health, Administration	27990	R380-40	5YR	06/06/2005	2005-13/52
	27571	R380-40	AMD	02/02/2005	2004-24/9
<u>permit provisions</u>					
School and Institutional Trust Lands, Administration	27609	R850-23	NEW	04/01/2005	2005-2/72
<u>permit terms</u>					
School and Institutional Trust Lands, Administration	27606	R850-25	NEW	04/01/2005	2005-2/81
<u>permits</u>					
Natural Resources, Forestry, Fire and State Lands	27750	R652-70-1900	AMD	05/20/2005	2005-7/66
	27740	R652-70-2300	AMD	05/20/2005	2005-7/67
	27843	R652-120	5YR	04/28/2005	2005-10/53
Natural Resources, Wildlife Resources	27553	R657-42-4	AMD	01/15/2005	2004-24/53
School and Institutional Trust Lands, Administration	27602	R850-130	REP	04/01/2005	2005-2/89
Transportation, Motor Carrier, Ports of Entry	27790	R912-6	NEW	06/27/2005	2005-8/39
<u>personnel files</u>					
Labor Commission, Antidiscrimination and Labor, Antidiscrimination	28002	R606-6	5YR	06/08/2005	2005-13/57
<u>pharmacies</u>					
Commerce, Occupational and Professional Licensing	27786	R156-17a	REP	05/17/2005	2005-8/2

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	27529	R156-17b	CPR	05/17/2005	2005-8/43
	27529	R156-17b	NEW	05/17/2005	2004-23/20
	27529	R156-17b	CPR	05/17/2005	2005-4/31
<u>pharmacists</u>					
Commerce, Occupational and Professional Licensing	27786	R156-17a	REP	05/17/2005	2005-8/2
	27529	R156-17b	CPR	05/17/2005	2005-4/31
	27529	R156-17b	NEW	05/17/2005	2004-23/20
	27529	R156-17b	CPR	05/17/2005	2005-8/43
<u>physicians</u>					
Health, Health Care Financing, Coverage and Reimbursement Policy	27582	R414-1B	NSC	02/01/2005	Not Printed
<u>pipeline</u>					
Public Service Commission, Administration	27527	R746-409-1	NSC	01/01/2005	Not Printed
<u>plan of operation</u>					
School and Institutional Trust Lands, Administration	27604	R850-26	NEW	04/01/2005	2005-2/84
	27601	R850-27	NEW	04/01/2005	2005-2/86
<u>planning</u>					
Administrative Services, Facilities Construction and Management	27615	R23-3	AMD	03/15/2005	2005-2/9
<u>planning-budgeting</u>					
Capitol Preservation Board (State), Administration	27713	R131-7	5YR	02/16/2005	2005-6/34
<u>PM10</u>					
Environmental Quality, Air Quality	27429	R307-110-11	AMD	03/04/2005	2004-19/37
	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
<u>PM2.5</u>					
Environmental Quality, Air Quality	27429	R307-110-11	AMD	03/04/2005	2004-19/37
	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
<u>policies and procedures</u>					
Human Services, Substance Abuse and Mental Health	27638	R523-1	AMD	03/07/2005	2005-3/28
<u>policy</u>					
Capitol Preservation Board (State), Administration	27632	R131-9	NEW	03/03/2005	2005-2/26
<u>ports of entry</u>					
Transportation, Motor Carrier, Ports of Entry	27790	R912-6	NEW	06/27/2005	2005-8/39
<u>preliminary notice</u>					
Commerce, Occupational and Professional Licensing	27734	R156-38b	NEW	04/18/2005	2005-6/6

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<u>prescriptions</u> Health, Health Care Financing, Coverage and Reimbursement Policy	27549	R414-63	AMD	01/26/2005	2004-24/13
<u>primary term</u> School and Institutional Trust Lands, Administration	27611	R850-20	REP	04/01/2005	2005-2/50
<u>privacy</u> Public Safety, Driver License	27878	R708-36	5YR	05/11/2005	2005-11/100
<u>private probation provider</u> Commerce, Occupational and Professional Licensing	27435	R156-50	AMD	01/18/2005	2004-20/12
	27435	R156-50	CPR	01/18/2005	2004-24/58
<u>probation</u> Commerce, Occupational and Professional Licensing	27435	R156-50	CPR	01/18/2005	2004-24/58
	27435	R156-50	AMD	01/18/2005	2004-20/12
<u>procurement</u> Administrative Services, Facilities Construction and Management	27603	R23-1	AMD	03/15/2005	2005-2/2
	27605	R23-2	AMD	03/15/2005	2005-2/7
	27615	R23-3	AMD	03/15/2005	2005-2/9
Capitol Preservation Board (State), Administration	27711	R131-1	5YR	02/16/2005	2005-6/33
<u>professional counselors</u> Commerce, Occupational and Professional Licensing	27749	R156-60c	5YR	03/14/2005	2005-7/75
<u>professional engineers</u> Commerce, Occupational and Professional Licensing	27698	R156-22	AMD	04/04/2005	2005-5/2
<u>professional land surveyors</u> Commerce, Occupational and Professional Licensing	27698	R156-22	AMD	04/04/2005	2005-5/2
<u>program</u> Capitol Preservation Board (State), Administration	27632	R131-9	NEW	03/03/2005	2005-2/26
<u>psychologists</u> Commerce, Occupational and Professional Licensing	27538	R156-61-502	AMD	01/04/2005	2004-23/40
<u>public buildings</u> Administrative Services, Facilities Construction and Management	27603	R23-1	AMD	03/15/2005	2005-2/2
Capitol Preservation Board (State), Administration	27712	R131-2	5YR	02/16/2005	2005-6/33
	27713	R131-7	5YR	02/16/2005	2005-6/34
Public Safety, Fire Marshal	27653	R710-4-3	AMD	03/04/2005	2005-3/44
<u>public education</u> Education, Administration	27799	R277-437	AMD	05/19/2005	2005-8/17
	27800	R277-438	AMD	05/19/2005	2005-8/19

<u>KEYWORD AGENCY</u>	<u>FILE NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE DATE</u>	<u>BULLETIN ISSUE/PAGE</u>
<u>public funds</u> Money Management Council, Administration	27742	R628-19	R&R	05/05/2005	2005-7/64
<u>public investments</u> Money Management Council, Administration	27743	R628-15	NEW	05/05/2005	2005-7/60
<u>public notification</u> Environmental Quality, Drinking Water	27914	R309-220	5YR	05/16/2005	2005-11/95
<u>public schools</u> Education, Administration	27705	R277-410	AMD	04/01/2005	2005-5/8
<u>public utilities</u> Public Service Commission, Administration	27587	R746-200-6	AMD	02/25/2005	2005-1/32
	27302	R746-360-9	CPR	01/04/2005	2004-23/54
	27302	R746-360-9	AMD	01/04/2005	2004-15/59
<u>quality standards</u> Environmental Quality, Drinking Water	27913	R309-200	5YR	05/16/2005	2005-11/93
<u>quarantines</u> Agriculture and Food, Animal Industry	27581	R58-2	AMD	02/01/2005	2005-1/9
<u>radiation</u> Environmental Quality, Radiation Control	27738	R313-34	5YR	03/08/2005	2005-7/76
	27646	R313-34-1	NSC	02/01/2005	Not Printed
<u>radiation safety</u> Environmental Quality, Radiation Control	27738	R313-34	5YR	03/08/2005	2005-7/76
	27646	R313-34-1	NSC	02/01/2005	Not Printed
<u>radioactive material</u> Environmental Quality, Radiation Control	27744	R313-15	AMD	05/13/2005	2005-7/33
	27748	R313-32	AMD	05/13/2005	2005-7/38
<u>radioactive materials</u> Environmental Quality, Radiation Control	27747	R313-22	AMD	05/13/2005	2005-7/36
<u>radiopharmaceutical</u> Environmental Quality, Radiation Control	27748	R313-32	AMD	05/13/2005	2005-7/38
<u>range management</u> School and Institutional Trust Lands, Administration	27811	R850-50	AMD	06/01/2005	2005-9/49
<u>real estate appraisal</u> Commerce, Real Estate	27797	R162-102-1	AMD	05/25/2005	2005-8/12
<u>real estate appraisals</u> Commerce, Real Estate	27788	R162-107	AMD	05/25/2005	2005-8/14
<u>real estate business</u> Commerce, Real Estate	27720	R162-2-2	NSC	04/01/2005	Not Printed

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<u>reciprocity</u> Environmental Quality, Radiation Control	27745	R313-19	AMD	05/13/2005	2005-7/34
<u>reclamation</u> Natural Resources, Oil, Gas and Mining; Coal	27778	R645-105	5YR	03/25/2005	2005-8/58
	27779	R645-400	5YR	03/25/2005	2005-8/58
<u>records</u> Health, Medical Examiner	27989	R448-20	5YR	06/06/2005	2005-13/54
<u>records appeal hearings</u> Administrative Services, Records Committee	27621	R35-1a	NEW	03/08/2005	2005-2/17
	27700	R35-1a	NSC	04/01/2005	Not Printed
	27625	R35-2	AMD	03/04/2005	2005-2/18
	27622	R35-3	AMD	03/04/2005	2005-2/19
	27624	R35-4	AMD	03/04/2005	2005-2/20
	27623	R35-5	AMD	03/04/2005	2005-2/21
	27620	R35-6	AMD	03/04/2005	2005-2/22
<u>recreation</u> Natural Resources, Wildlife Resources	27552	R657-38	AMD	01/15/2005	2004-24/48
<u>registration</u> Workforce Services, Workforce Information and Payment Services	27729	R994-403	NSC	04/01/2005	Not Printed
<u>regulated contaminants</u> Environmental Quality, Drinking Water	27913	R309-200	5YR	05/16/2005	2005-11/93
<u>religious activities</u> Tax Commission, Auditing	27819	R865-19S-20	AMD	07/01/2005	2005-9/52
	27820	R865-19S-32	AMD	07/01/2005	2005-9/54
	27822	R865-19S-51	AMD	07/01/2005	2005-9/55
	27825	R865-19S-52	AMD	07/01/2005	2005-9/56
	27826	R865-19S-60	AMD	07/01/2005	2005-9/56
	27828	R865-19S-68	AMD	07/01/2005	2005-9/57
	27831	R865-19S-71	AMD	07/01/2005	2005-9/58
	27832	R865-19S-85	AMD	07/01/2005	2005-9/59
	27833	R865-19S-90	AMD	07/01/2005	2005-9/61
	27834	R865-19S-101	AMD	07/01/2005	2005-9/62
<u>reporting death</u> Health, Medical Examiner	27988	R448-10	5YR	06/06/2005	2005-13/53
<u>repository</u> Governor, Planning and Budget, Chief Information Officer	27545	R365-101	NEW	03/09/2005	2004-23/45
<u>residency requirements</u> Community and Economic Development, Community Development, Community Services	27418	R202-202-202	AMD	01/12/2005	2004-19/24

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<u>resolution</u>					
Administrative Services, Facilities Construction and Management	27614	R23-26	NEW	03/15/2005	2005-2/12
<u>respite</u>					
Human Services, Aging and Adult Services	28039	R510-401	5YR	06/22/2005	Not Printed
<u>retirement</u>					
Public Safety, Peace Officer Standards and Training	28043	R728-205	5YR	06/27/2005	Not Printed
<u>rights</u>					
Human Services, Services for People with Disabilities	27627	R539-3	NEW	03/12/2005	2005-2/47
	27793	R539-3-10	AMD	05/17/2005	2005-8/30
<u>royalties</u>					
School and Institutional Trust Lands, Administration	27611	R850-20	REP	04/01/2005	2005-2/50
<u>rules</u>					
Public Service Commission, Administration	27587	R746-200-6	AMD	02/25/2005	2005-1/32
<u>rules and procedures</u>					
Health, Epidemiology and Laboratory Services, Epidemiology	27496	R386-702	CPR	05/16/2005	2005-3/53
	27496	R386-702	AMD	05/16/2005	2004-21/13
Public Service Commission, Administration	27821	R746-341	AMD	06/20/2005	2005-9/42
	27527	R746-409-1	NSC	01/01/2005	Not Printed
<u>safety</u>					
Education, Administration	27539	R277-400	NSC	01/01/2005	Not Printed
Environmental Quality, Radiation Control	27744	R313-15	AMD	05/13/2005	2005-7/33
Labor Commission, Safety	27616	R616-2-3	AMD	03/07/2005	2005-2/49
	27590	R616-3-3	AMD	02/01/2005	2005-1/30
Public Service Commission, Administration	27527	R746-409-1	NSC	01/01/2005	Not Printed
Transportation, Motor Carrier, Ports of Entry	27954	R912-16	5YR	06/01/2005	2005-12/89
<u>safety education</u>					
Education, Administration	27539	R277-400	NSC	01/01/2005	Not Printed
<u>sales tax</u>					
Tax Commission, Auditing	27819	R865-19S-20	AMD	07/01/2005	2005-9/52
	27820	R865-19S-32	AMD	07/01/2005	2005-9/54
	27822	R865-19S-51	AMD	07/01/2005	2005-9/55
	27825	R865-19S-52	AMD	07/01/2005	2005-9/56
	27826	R865-19S-60	AMD	07/01/2005	2005-9/56
	27828	R865-19S-68	AMD	07/01/2005	2005-9/57
	27831	R865-19S-71	AMD	07/01/2005	2005-9/58
	27832	R865-19S-85	AMD	07/01/2005	2005-9/59
	27833	R865-19S-90	AMD	07/01/2005	2005-9/61
	27834	R865-19S-101	AMD	07/01/2005	2005-9/62

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<u>sand</u> School and Institutional Trust Lands, Administration	27609	R850-23	NEW	04/01/2005	2005-2/72
<u>scholarship</u> Regents (Board Of), Administration	27663	R765-604	5YR	01/19/2005	2005-4/56
<u>scholarships</u> Education, Administration	28026	R277-602	EMR	06/14/2005	2005-13/47
	27666	R765-604	AMD	03/22/2005	2005-4/22
<u>secondary education</u> Regents (Board Of), Administration	27666	R765-604	AMD	03/22/2005	2005-4/22
	27663	R765-604	5YR	01/19/2005	2005-4/56
<u>securities</u> Commerce, Securities	27732	R164-2	5YR	02/28/2005	2005-6/34
	27735	R164-2-1	NSC	04/01/2005	Not Printed
	27777	R164-9-1	EMR	03/25/2005	2005-8/53
Money Management Council, Administration	27742	R628-19	R&R	05/05/2005	2005-7/64
<u>securities regulation</u> Commerce, Securities	27732	R164-2	5YR	02/28/2005	2005-6/34
	27735	R164-2-1	NSC	04/01/2005	Not Printed
	27777	R164-9-1	EMR	03/25/2005	2005-8/53
Money Management Council, Administration	27743	R628-15	NEW	05/05/2005	2005-7/60
<u>self administered services</u> Human Services, Services for People with Disabilities	27801	R539-5	NEW	05/17/2005	2005-8/33
<u>self-employment income</u> Community and Economic Development, Community Development, Community Services	27421	R202-203-324	AMD	01/12/2005	2004-19/25
	27419	R202-203-328	AMD	01/12/2005	2004-19/26
<u>septic tanks</u> Environmental Quality, Water Quality	27699	R317-4	5YR	02/10/2005	2005-5/30
<u>services</u> Human Services, Services for People with Disabilities	27626	R539-2	NEW	03/12/2005	2005-2/45
<u>settlement</u> Administrative Services, Facilities Construction and Management	27614	R23-26	NEW	03/15/2005	2005-2/12
<u>skills tests</u> Public Safety, Driver License	27898	R708-37	5YR	05/13/2005	2005-11/101
<u>small game</u> Natural Resources, Wildlife Resources	27864	R657-21	5YR	05/05/2005	2005-11/99
<u>social services</u> Human Services, Services for People with Disabilities	27651	R539-2	REP	03/12/2005	2005-3/31

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	27792	R539-2-6	AMD	05/17/2005	2005-8/29
	27652	R539-3	REP	03/12/2005	2005-3/34
	27753	R539-4	REP	05/03/2005	2005-7/58
	27802	R539-5	REP	05/17/2005	2005-8/31
	28037	R539-7	EMR	06/20/2005	Not Printed
	27795	R539-8	REP	05/17/2005	2005-8/35
<u>source monitoring</u>					
Environmental Quality, Drinking Water	27917	R309-205	5YR	05/16/2005	2005-11/93
<u>sovereign lands</u>					
Natural Resources, Forestry, Fire and State Lands	27750	R652-70-1900	AMD	05/20/2005	2005-7/66
	27740	R652-70-2300	AMD	05/20/2005	2005-7/67
<u>special needs students</u>					
Education, Administration	28026	R277-602	EMR	06/14/2005	2005-13/47
<u>specific licenses</u>					
Environmental Quality, Radiation Control	27747	R313-22	AMD	05/13/2005	2005-7/36
<u>state buildings</u>					
Administrative Services, Facilities Construction and Management	27615	R23-3	AMD	03/15/2005	2005-2/9
Capitol Preservation Board (State), Administration	27713	R131-7	5YR	02/16/2005	2005-6/34
<u>state employees</u>					
Administrative Services, Finance	27848	R25-7	AMD	07/01/2005	2005-10/7
<u>state HEAT office records</u>					
Community and Economic Development, Community Development, Community Services	27420	R202-207-702	AMD	01/12/2005	2004-19/27
<u>state records committee</u>					
Administrative Services, Records Committee	27621	R35-1a	NEW	03/08/2005	2005-2/17
	27700	R35-1a	NSC	04/01/2005	Not Printed
	27625	R35-2	AMD	03/04/2005	2005-2/18
	27622	R35-3	AMD	03/04/2005	2005-2/19
	27624	R35-4	AMD	03/04/2005	2005-2/20
	27623	R35-5	AMD	03/04/2005	2005-2/21
	27620	R35-6	AMD	03/04/2005	2005-2/22
<u>state vehicle use</u>					
Administrative Services, Fleet Operations	27599	R27-3-6	NSC	02/01/2005	Not Printed
<u>stationary sources</u>					
Environmental Quality, Air Quality	27665	R307-210	AMD	04/19/2005	2005-4/17
<u>student eligibility</u>					
Workforce Services, Workforce Information and Payment Services	27729	R994-403	NSC	04/01/2005	Not Printed
<u>student loans</u>					
Regents (Board Of), Administration	27841	R765-626	5YR	04/26/2005	2005-10/53

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<u>students</u> Education, Administration	27662	R277-713	AMD	03/21/2005	2005-4/14
<u>surface water treatment plant monitoring</u> Environmental Quality, Drinking Water	27910	R309-215	5YR	05/16/2005	2005-11/94
<u>survey</u> Environmental Quality, Radiation Control	27738	R313-34	5YR	03/08/2005	2005-7/76
	27646	R313-34-1	NSC	02/01/2005	Not Printed
<u>surveyors</u> Commerce, Occupational and Professional Licensing	27698	R156-22	AMD	04/04/2005	2005-5/2
<u>systems</u> Public Safety, Fire Marshal	27671	R710-7-1	AMD	06/13/2005	2005-4/21
<u>tax exemptions</u> Tax Commission, Auditing	27819	R865-19S-20	AMD	07/01/2005	2005-9/52
	27820	R865-19S-32	AMD	07/01/2005	2005-9/54
	27822	R865-19S-51	AMD	07/01/2005	2005-9/55
	27825	R865-19S-52	AMD	07/01/2005	2005-9/56
	27826	R865-19S-60	AMD	07/01/2005	2005-9/56
	27828	R865-19S-68	AMD	07/01/2005	2005-9/57
	27831	R865-19S-71	AMD	07/01/2005	2005-9/58
	27832	R865-19S-85	AMD	07/01/2005	2005-9/59
	27834	R865-19S-101	AMD	07/01/2005	2005-9/62
<u>tax returns</u> Tax Commission, Auditing	27804	R865-9I-21	AMD	06/08/2005	2005-9/51
<u>taxation</u> Tax Commission, Auditing	27739	R865-16R	5YR	03/08/2005	2005-7/77
Tax Commission, Motor Vehicle	27803	R873-22M-27	AMD	06/08/2005	2005-9/63
<u>teacher certification</u> Professional Practices Advisory Commission, Administration	27542	R686-100	NSC	01/01/2005	Not Printed
<u>technology best practices</u> Governor, Planning and Budget, Chief Information Officer	27545	R365-101	NEW	03/09/2005	2004-23/45
<u>telecommunications</u> Public Service Commission, Administration	27821	R746-341	AMD	06/20/2005	2005-9/42
	27302	R746-360-9	AMD	01/04/2005	2004-15/59
	27302	R746-360-9	CPR	01/04/2005	2004-23/54
<u>telephone</u> Public Service Commission, Administration	27821	R746-341	AMD	06/20/2005	2005-9/42
<u>transportation</u> Administrative Services, Finance	27848	R25-7	AMD	07/01/2005	2005-10/7
Environmental Quality, Radiation Control	27745	R313-19	AMD	05/13/2005	2005-7/34
Transportation, Operations, Construction	27846	R916-4	NEW	06/27/2005	2005-10/46

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<u>trucks</u>					
Transportation, Motor Carrier, Ports of Entry	27790	R912-6	NEW	06/27/2005	2005-8/39
	27954	R912-16	5YR	06/01/2005	2005-12/89
<u>unattended death</u>					
Health, Medical Examiner	27988	R448-10	5YR	06/06/2005	2005-13/53
<u>underground injection control</u>					
Environmental Quality, Water Quality	27596	R317-7	NSC	02/01/2005	Not Printed
<u>unemployment compensation</u>					
Workforce Services, Workforce Information and Payment Services	27730	R994-201	NSC	04/01/2005	Not Printed
	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
	27728	R994-401	NSC	04/01/2005	Not Printed
	27729	R994-403	NSC	04/01/2005	Not Printed
<u>unemployment experience rating</u>					
Workforce Services, Workforce Information and Payment Services	27823	R994-304	NEW	06/01/2005	2005-9/69
<u>uninsured motorist database</u>					
Public Safety, Driver License	27877	R708-32	5YR	05/10/2005	2005-11/100
<u>units</u>					
Environmental Quality, Radiation Control	27746	R313-12	AMD	05/13/2005	2005-7/29
<u>universal service</u>					
Public Service Commission, Administration	27302	R746-360-9	AMD	01/04/2005	2004-15/59
	27302	R746-360-9	CPR	01/04/2005	2004-23/54
<u>utility service shutoff</u>					
Public Service Commission, Administration	27587	R746-200-6	AMD	02/25/2005	2005-1/32
<u>vehicle replacement</u>					
Administrative Services, Fleet Operations	27543	R27-4	AMD	01/10/2005	2004-23/5
<u>waste disposal</u>					
Environmental Quality, Radiation Control	27744	R313-15	AMD	05/13/2005	2005-7/33
Environmental Quality, Water Quality	27659	R317-1	AMD	04/20/2005	2005-3/5
<u>waste water</u>					
Environmental Quality, Water Quality	27699	R317-4	5YR	02/10/2005	2005-5/30
<u>wastewater</u>					
Environmental Quality, Water Quality	27658	R317-3-10	AMD	04/20/2005	2005-3/10
<u>wastewater treatment</u>					
Environmental Quality, Water Quality	27656	R317-10-6	AMD	04/20/2005	2005-3/18
<u>water pollution</u>					
Environmental Quality, Water Quality	27659	R317-1	AMD	04/20/2005	2005-3/5
	27593	R317-2	CPR	06/01/2005	2005-9/72

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	27593	R317-2	AMD	06/01/2005	2005-1/13
	27658	R317-3-10	AMD	04/20/2005	2005-3/10
	27657	R317-8-3	AMD	04/20/2005	2005-3/12
	27656	R317-10-6	AMD	04/20/2005	2005-3/18
<u>water quality</u>					
Environmental Quality, Drinking Water	27905	R309-225	5YR	05/16/2005	2005-11/95
Environmental Quality, Water Quality	27658	R317-3-10	AMD	04/20/2005	2005-3/10
	27596	R317-7	NSC	02/01/2005	Not Printed
<u>water quality standards</u>					
Environmental Quality, Water Quality	27593	R317-2	CPR	06/01/2005	2005-9/72
	27593	R317-2	AMD	06/01/2005	2005-1/13
<u>water rights</u>					
Natural Resources, Water Rights	27690	R655-3	5YR	02/01/2005	2005-4/54
	27475	R655-4	NSC	02/01/2005	Not Printed
	27691	R655-4	5YR	02/01/2005	2005-4/55
	27392	R655-4	AMD	01/12/2005	2004-18/30
<u>water system rating</u>					
Environmental Quality, Drinking Water	27909	R309-150	5YR	05/16/2005	2005-11/92
<u>watershed management</u>					
Environmental Quality, Drinking Water	27907	R309-105	5YR	05/16/2005	2005-11/91
<u>well drillers</u>					
Natural Resources, Water Rights	27691	R655-4	5YR	02/01/2005	2005-4/55
<u>well drilling</u>					
Natural Resources, Water Rights	27475	R655-4	NSC	02/01/2005	Not Printed
	27392	R655-4	AMD	01/12/2005	2004-18/30
<u>wildlife</u>					
Natural Resources, Wildlife Resources	27550	R657-5	AMD	01/15/2005	2004-24/38
	27721	R657-12	AMD	04/15/2005	2005-6/24
	27432	R657-13	AMD	01/03/2005	2004-20/33
	27432	R657-13	CPR	01/03/2005	2004-22/66
	27863	R657-15	5YR	05/05/2005	2005-11/99
	27864	R657-21	5YR	05/05/2005	2005-11/99
	27649	R657-33	AMD	03/04/2005	2005-3/36
	27751	R657-33-2	NSC	04/01/2005	Not Printed
	27551	R657-37	AMD	01/15/2005	2004-24/45
	27552	R657-38	AMD	01/15/2005	2004-24/48
	27553	R657-42-4	AMD	01/15/2005	2004-24/53
	27637	R657-47	NSC	03/04/2005	Not Printed
	27639	R657-47	REP	03/04/2005	2005-3/39
	27827	R657-55	NEW	06/01/2005	2005-9/38
<u>wildlife conservation</u>					
Natural Resources, Wildlife Resources	27552	R657-38	AMD	01/15/2005	2004-24/48

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<u>wildlife law</u>					
Natural Resources, Wildlife Resources	27721	R657-12	AMD	04/15/2005	2005-6/24
	27432	R657-13	AMD	01/03/2005	2004-20/33
	27432	R657-13	CPR	01/03/2005	2004-22/66
	27864	R657-21	5YR	05/05/2005	2005-11/99
<u>wildlife management</u>					
Natural Resources, Wildlife Resources	27863	R657-15	5YR	05/05/2005	2005-11/99
<u>wildlife permits</u>					
Natural Resources, Wildlife Resources	27639	R657-47	REP	03/04/2005	2005-3/39
	27637	R657-47	NSC	03/04/2005	Not Printed
	27827	R657-55	NEW	06/01/2005	2005-9/38
<u>workers compensation insurance</u>					
Insurance, Administration	27488	R590-231	CPR	05/20/2005	2005-3/55
<u>workers' compensation insurance</u>					
Insurance, Administration	27488	R590-231	CPR	05/20/2005	2005-8/50
	27488	R590-231	NEW	05/20/2005	2004-21/15