

UTAH STATE BULLETIN

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

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

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

Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Environmental Quality Drinking Water

Public Hearing on Proposed Amendment to Rule R309-100 from the January 15, 2007, issue of the Bulletin

The Department of Environmental Quality (DEQ), Division of Drinking Water will hold a hearing on Friday, May 11, 2007, at 1:00 p.m. at the DEQ Administration Building, 168 North 1950 West, Room 101, Salt Lake City, Utah.

The purpose of the hearing is to receive comments from interested parties on the proposed amendment to Rule R309-100 that was published in the January 15, 2007, issue of the *Bulletin* under DAR No. 29370 (2007-2, pg 13).

For further information or if you have questions, please contact Bill Birkes at phone 801-536-4201, at FAX 801-536-42, or e-mail at bbirkes@utah.gov

Governor's Proclamation: Calling the Fifty-Seventh Legislature into a First Extraordinary Session

PROCLAMATION

WHEREAS, since the close of the 2007 General Session of the 57th Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

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

NOW, THEREFORE, I, JON M. HUNTSMAN, JR., Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 57th Legislature into a First Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 18th day of April, 2007, at 12:00 noon, for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2007 General Session of the Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Salt Lake Capitol Complex in Salt Lake City, Utah, this 2nd day of April, 2007.

(State Seal)

Jon M. Huntsman, Jr.
Governor

Gary R. Herbert
Lieutenant Governor

NOTICES OF PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between March 16, 2007, 12:00 a.m., and April 2, 2007, 11:59 p.m. are included in this, the April 15, 2007, 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 between paragraphs (· · · · ·) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not printed. If a PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least May 15, 2007. 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 requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through August 13, 2007, 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 seven calendar days after the close of the public comment period 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 Section 63-46a-4; and 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, Administration

R13-2

Access to Records

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29772

FILED: 04/02/2007, 15:33

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment updates the Department's administrative rule authorized by the Government Records Access and Management Act (GRAMA). The department determined these amendments were necessary as it reviewed the rule in anticipation of filing a Five-Year Notice of Review and Statement of Continuation.

SUMMARY OF THE RULE OR CHANGE: In Section R13-2-2, this proposed amendment reorders the definitions and adds definitions for department and records officer. In Section R13-2-4, this proposed amendment updates the list of divisions and offices within the department making it consistent with Section 63A-1-109. In Section R13-2-5, the text is changed to clarify that an appeal to the department's executive director is available in the event that a division denies or partially denies a request for records. In Section R13-2-6, language is changed to make it consistent with the statutory provisions related to fees. Finally, Section R13-2-8 is added to clarify how individuals may access records in the custody of the Division of Archives and Records Service.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 63-2-204(2)(d) and 63-2-904(2)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This proposed amendment has no impact to the state budget. It updates and clarifies existing provisions, and makes the rule consistent with statute. Any costs associated with responding to records requests are covered by fees approved by the Legislature in the annual appropriations act.
- ❖ LOCAL GOVERNMENTS: This proposed amendment will have no impact to local government. It updates and clarifies existing provisions, and makes the rule consistent with statute. Any fees associated with obtaining records are approved by the Legislature in the annual appropriations act.
- ❖ OTHER PERSONS: This proposed amendment will have no impact to other persons. It updates and clarifies existing provisions, and makes the rule consistent with statute. Any fees associated with obtaining records are approved by the Legislature in the annual appropriations act.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs imposed by the rule. Any fees associated with obtaining records are approved by the Legislature in the annual appropriations act.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendments to this rule will not impose any costs on businesses. Kimberly K. Hood, Executive Director

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

ADMINISTRATIVE SERVICES
ADMINISTRATION
Room 3120 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:

Kenneth A. Hansen at the above address, by phone at 801-538-3777, by FAX at 801-538-1773, or by Internet E-mail at khansen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2007

AUTHORIZED BY: Kim Hood, Executive Director

R13. Administrative Services, Administration.

R13-2. Access to Records.

R13-2-1. Purpose and Authority.

Under authority of [~~Sections~~Subsections 63-2-204(2)(d), and 63-2-904(2)]~~], and Title 63, Chapter 46a~~, this rule provides procedures for access and denial of access to government records.

R13-2-2. Definitions.

Terms used in this rule are defined in Section 63-2-103. Additional terms are defined as follows:

(1) "Records officer" means the individual appointed by the division to fulfill the function of Subsection 63-2-103(21).

(2) "Department" means the Department of Administrative Services.

(2) "Division" means a division of the Department of Administrative Services.

(3) "Office" means an office of the Department of Administrative Services.

R13-2-3. Records Officer.

Each division director shall comply with Section 63-2-903 and shall appoint a records officer to perform the following functions:

(a) ~~[F]~~the duties set forth in Section 63-2-903; and

(b) ~~[R]~~review and respond to requests for access to division records.

R13-2-4. Requests for Access.

(1) Except as provided by R13-2-8, a [Requests]request for access to records [should]shall be directed to the records officer of the office or division which the requester believes generated or possesses the records.

(2) The offices and divisions of the department are as described in Sections 63A-1-104 and 63A-1-109 ~~and 63A-8-201~~ and are located ~~as follow~~ at the corresponding address indicated below:

(a) Administrative Services ~~[Administration]~~ Executive Director's Office, 3120 State Office Building, Salt Lake City, ~~[Utah]~~ UT 84114.

(b) Administrative Rules, 4120 State Office Building, Salt Lake City, ~~[Utah]~~ UT 84114.

(c) Archives and Records Service, 346 S. Rio Grande Street, Salt Lake City, ~~[Utah]~~ UT 84101-1106.

(d) Child Welfare Parental Defense, 3120 State Office Building, Salt Lake City, UT 84114.

(e) Debt Collection, 5110 State Office Building, Salt Lake City, UT 84114.

~~[(d)]~~ (f) Facilities Construction and Management, 4110 State Office Building, Salt Lake City, ~~[Utah]~~ UT 84114.

~~[(e)]~~ (g) Finance, 2110 State Office Building, Salt Lake City, ~~[Utah]~~ UT 84114.

~~[(f)]~~ (h) Fleet Operations, 4120 State Office Building, Salt Lake City, ~~[Utah]~~ UT 84114.

~~[(g)]~~ (i) Information Technology, 6000 State Office Building, Salt Lake City, Utah.

~~[(h)]~~ (j) Purchasing and General Services, 3150 State Office Building, Salt Lake City, ~~[Utah]~~ UT 84114.

~~[(i)]~~ (k) Risk Management, 5120 State Office Building, Salt Lake City, ~~[Utah]~~ UT 84114.

~~[(j)]~~ (l) Surplus Property, Division of Fleet Operations, 4120 State Office Building, Salt Lake City, ~~[Utah]~~ UT 84114.

~~[(k)]~~ (m) Debt Collection, 5110 State Office Building, Salt Lake City, Utah.

~~[(l)]~~ (n) Child Welfare Parental Defense, 5100 State Office Building, Salt Lake City, Utah.

~~[(m)]~~ (3) The division is not required to respond to requests submitted to the wrong person or location within the time limits set by the Government Records Access and Management Act (Section 63-2-101).

R13-2-5. Appeal of ~~[Agency]~~ Office or Division Decision.

(1) Except as provided by R13-2-8, if [H] a requester is dissatisfied with the ~~[agency's]~~ initial decision rendered by an office or division, the requester may appeal the decision to the ~~[corresponding division]~~ department executive director under the procedures of Section 63-2-401 et seq.

(2) An individual may contest the accuracy or completeness of a document pertaining to that individual pursuant to Section 63-2-603. ~~[The]~~ This type of request ~~[should]~~ shall be made to the records officer.

R13-2-6. Fees.

(1) A fee schedule for the ~~[direct]~~ actual costs of ~~[duplicating or compiling]~~ providing a record may be obtained from ~~[the]~~ an office or division by contacting the records officer. The fee schedule is also available in the annual appropriations bill.

(2) Fees for ~~[duplication and compilation of]~~ providing a record may be waived under certain circumstances described in Subsection 63-2-203~~(3)~~ (4). Requests for this waiver of fees may be made to the records officer.

R13-2-7. Forms.

Request forms are available from the records officer of each office or division.

R13-2-8. Access to Records in the Custody of the Division of Archives and Records Service.

(1) An individual need not submit a formal records request to inspect public records of permanent or historical value stored at the state archives.

(2) An individual may request access to records that are noncurrent records of permanent or historical value in the custody of the state archives. The individual shall direct that request to the state archives' research center, 346 S Rio Grande, Salt Lake City, UT 84101-1106.

(3) If the requester is dissatisfied with the initial decision rendered by the research center, or if the state archives' research center denies access to these records, the requester may appeal the decision to the state archivist under the procedures of Section 63-2-401 et seq.

KEY: freedom of information, public information, confidentiality of information, access to information

Date of Enactment or Last Substantive Amendment: ~~[December 21, 2004]~~ 2007

Notice of Continuation: May 31, 2002

Authorizing, and Implemented or Interpreted Law: 63-2-204(2)(d), 63-2-904(2) ~~[63-2-101 et seq.]~~



Commerce, Consumer Protection **R152-34** Postsecondary Proprietary School Act Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29710

FILED: 03/19/2007, 16:54

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During its five-year review of the Postsecondary Proprietary School Act Rules, the Division determined it was necessary to make certain corrections in the rule. The proposed rule change corrects references to provisions of the rule, changes language in Section R152-34-107 to reflect the language of Section 13-34-107, and makes grammatical changes.

SUMMARY OF THE RULE OR CHANGE: The proposed rule change corrects references to provisions of the rule, changes language in Section R152-34-107 to reflect the language of Section 13-34-107, and makes grammatical changes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-2-5

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The filing only corrects references to provisions of the rule, changes language of the rule to reflect the statute, and makes grammatical changes; therefore there are no anticipated costs or savings to the state budget.
- ❖ LOCAL GOVERNMENTS: The filing only corrects references to provisions of the rule, changes language of the rule to reflect the statute, and makes grammatical changes; therefore there are no anticipated costs or savings to local governments.
- ❖ OTHER PERSONS: The filing only corrects references to provisions of the rule, changes language of the rule to reflect the statute, and makes grammatical changes; therefore there are no anticipated costs or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The filing only corrects references to provisions of the rule, changes language of the rule to reflect the statute, and makes grammatical changes; therefore there are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As discussed in the rule summary, this rule filing makes technical amendments. No fiscal impact to businesses is anticipated. Francine Giani, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Thomas Copeland at the above address, by phone at 801-530-6601, by FAX at 801-530-6001, or by Internet E-mail at tcopeland@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2007

AUTHORIZED BY: Kevin V Olsen, Director

R152. Commerce, Consumer Protection.**R152-34. Postsecondary Proprietary School Act Rules.****R152-34-4. Rules Relating to the Responsibilities of Proprietary Schools as Outlined in Section 13-34-104.**

(1) In order to be able to award a degree or certificate, a proprietary school must meet the following general criteria:

(a) Its program must meet the following generally accepted minimum number of semester/quarter credit hours required to complete a standard college degree: associate, 60/90; bachelor's, 120/180; master's, 150/225; and doctorate, approximately 200/300.

(b) The areas of study, the methods of instruction, and the level of effort required of the student for a degree or certificate must be commensurate with reasonable standards established by recognized accrediting agencies and associations.

(c) In order for the proprietary school to award a degree or certificate, the faculty must be academically prepared in the area of emphasis at the appropriate level, or as to vocational-technical programs, must have equivalent job expertise based on reasonable standards established by recognized accrediting agencies and associations. This notwithstanding, credit may be awarded toward degree completion based on (1) transfer of credit from other accredited and recognized institutions, (2) recognized proficiency exams (CLEP, AP, etc.), and (3) in-service competencies as evaluated and recommended by recognized national associations such as the American Council on Education. Such credit for personal experiences shall be limited to not more than one year's worth of work (30 semester credit hours/45 quarter credit hours).

(d) In order to offer a program of study, either degree or non-degree, it must be of such a nature and quality as to make reasonable the student's expectation of some advantage in enhancing or pursuing employment, as opposed to a general education or non-vocational program which is excluded from registration under 13-34-105(g).

(i) If the purpose of an offered program of study is to prepare students for entry into fields of employment which require licensure by any licensing agency or to prepare students for entry into fields of employment for which it would be impracticable to have reasonable expectations of employment without accreditation and/or certification by any trade and/or industry association and/or accrediting and/or certifying body, the entity offering, or desiring to offer, the program of study must provide the Division:

(A) information regarding the type of license, accreditation and/or certification that students completing the program of study must obtain in order to have a reasonable expectation of employment;

(B) the name and contact information of the agency, trade and/or industry association and/or accrediting and/or certifying body;

(C) evidence that the curriculum for the offered program of study has been reviewed by the appropriate entity from subsection(B) above; and,

(D) evidence that the instructors teaching students enrolled in the program of study are licensed by the appropriate agency from subsection (B) above, or have earned the accreditation and/or certification from the appropriate entity from subsection (B) above to teach and/or practice in the field for which the students are being prepared.

(2) The faculty member shall assign work, set standards of accomplishment, measure the student's ability to perform the assigned tasks, provide information back to the student as to his or her strengths and deficiencies, and as appropriate, provide counseling, advice, and further assignments to enhance the student's learning experience. This requirement does not preclude the use of computer assisted instruction or programmed learning techniques when appropriately supervised by a qualified faculty member.

(3) As appropriate to the program or course of study to be pursued, the proprietary school shall evaluate the prospective student's experience, background, and ability to succeed in that program through review of educational records and transcripts, tests or examinations, interviews, and counseling. This evaluation shall include a finding that the prospective student (1) is beyond the age of compulsory high school attendance, as prescribed by Utah law; and (2) has received either a high school diploma or a General Education Development certificate,

or has satisfactorily completed a national or industry developed competency-based test or an entrance examination that establishes the individual's ability to benefit. Based on this evaluation, before admitting the prospective student to the program, the institution must have a reasonable expectation that the student can successfully complete the program, and that if he or she does so complete, that there is a reasonable expectation that he or she will be qualified and be able to find appropriate employment based on the skills acquired through the program.

(4) Each proprietary school shall prepare for the use of prospective students and other interested persons a catalog or general information bulletin that contains the following information:

(a) The legal name, address, and telephone number of the institution, also any branches and/or extension locations;

(b) The date of issue;

(c) The names, titles, and qualifications of administrators and faculty;

(d) The calendar, including scheduled state and federal holidays, recess periods, and dates for enrollment, registration, start of classes, withdrawal and completion;

(e) The admission and enrollment prerequisites, both institutional and programmatic, as provided in R152-34-8(1);

(f) The policies regarding student conduct, discipline, and probation for deficiencies in academics and behavior;

(g) The policies regarding attendance and absence, and any provision for make-up of assignments;

(h) The policies regarding dismissal and/or interruption of training and of reentry;

(i) The policies explaining or describing the records that are to be maintained by the institution, including transcripts;

(j) The policies explaining any credit granted for previous education and experience;

(k) The policies explaining the grading system, including standards of progress required;

(l) The policies explaining the provision to students of interim grade or performance reports;

(m) The graduation requirements and the credential awarded upon satisfactory completion of a program;

(n) The schedule of tuition, any other fees, books, supplies and tools;

(o) The policies regarding refunds of any unused charges collected as provided in R152-34-8(3);

(p) The student assistance available, including scholarships and loans.

(q) The name, description, and length of each program offered, including a subject outline with course titles and approximate number of credit or clock hours devoted to each course;

(r) The placement services available and any variation by program;

(s) The facilities and equipment available;

(t) An explanation of whether and to what extent that the credit hours earned by the student are transferable to other institutions; and

(u) Such other information as the division may [reasonable]reasonably require from time to time.

R152-34-6. Rules Relating to the Registration Statement Required under Section 13-34-106.

(1) The registration statement application shall provide the following information and statements made under oath:

(a) The institution's name, address, and telephone number;

(b) The names of all persons involved in the operation of the institution and a stipulation that the resumes are on file at the institution and available to the students.

(c) The name of the agent authorized to respond to students inquiries if the registrant is a branch institution whose parent is located outside of the state of Utah;

(d) A statement that its articles of incorporation have been registered and accepted by the Utah Department of Commerce, Division of Corporations and Commercial Code and that it has a local business license, if required;

(e) A statement that its facilities, equipment, and materials meet minimum standards for the training and assistance necessary to prepare students for employment;

(f) A statement that it maintains accurate attendance records, progress and grade reports, and information on tuition and fee payments appropriately accessible to students;

(g) A statement that its maintenance and operation is in compliance with all ordinances, laws, and codes relative to the safety and health of all persons upon the premises;

(h) A statement that there is sufficient student interest in Utah for the courses that it provides and that there is reasonable employment potential in those areas of study in which credentials will be awarded;

(i) If the registration statement is filed pursuant to Section 13-34-107(3)(b), a detailed description of any material modifications to be made in the institution's operations, identification of those programs that are offered in whole or in part in Utah and a statement of whether the student can complete his or her program without having to take residence at the parent campus; and

(j) A statement that it maintains adequate insurance continuously in force to protect its assets.

(k) A disclosure as required by R152-34-7(1).

(l) If the registrant is a correspondence institution, whether located within or without the state of Utah, a demonstration that the institution's educational objectives can be achieved through home study; that its programs, instructional material, and methods are sufficiently comprehensive, accurate, and up-to-date to meet the announced institutional course and program objectives; that it provides adequate interaction between the student and instructor, through the submission and correction of lessons, assignments, examinations, and such other methods as are recognized as characteristic of this particular learning technique; and that any degrees and certificates earned through correspondence study meet the requirements and criteria of R152-34-4(1).

(2) The institution shall provide with its registration statement application copies of the following documents:

(a) A sample of the credential(s) awarded upon completion of a program;

(b) A sample of current advertising including radio, television, newspaper and magazine advertisements, and listings in telephone directories;

(c) A copy of the student enrollment agreement; and

(d) A financial statement, as described in [~~R152-34-7(5)~~]R152-34-7(8) and Section 13-34-107(6).

(3) If any information contained in the registration statement application becomes incorrect or incomplete, the registrant shall, within thirty (30) days after the information becomes incorrect or incomplete, correct the application or file the complete information as required by the division.

(4) An institution ceasing its operations shall immediately inform the division and provide the division with student records in accordance with Section 13-34-109.

R152-34-7. Rules Relating to the Operation of Proprietary Schools under Section 13-34-107.

(1) An authorized officer of the institution to be registered under this chapter shall sign a disclosure as to whether the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules as determined in a criminal, civil or administrative proceeding.

(2) The division shall refuse to register an institution when the division:

(a) determines that the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules, as determined in a criminal, civil or administrative proceeding;

(b) determines the violation(s) to be relevant to the appropriate operation of the school; and

(c) has a reasonable doubt that the institution will function in accordance with these laws and rules or provide students with an appropriate learning experience.

(3) A change in the ownership of an institution, as defined in Section 13-34-103(8), occurs when there is a merger or change in the controlling interest of the entity or if there is a transfer of more than 50 percent of the its assets within a three-year period. When this occurs the following information is submitted to the division for its review:

(a) a copy of any new articles of incorporation;

(b) a current financial statement, as outlined in section (8) below;

(c) a listing of all institutional personnel that have changed as a result of the ownership transaction, together with complete resumes and qualifications;

(d) a detailed description of any material modifications to be made in the operation of the institution; and

(e) payment of the appropriate fee.

(i) The division collects the following fees in accordance with U.C.A. Subsection 13-34-107(5):

(A) Initial registration application fees will be based on the expected gross income of the registered program during the first year of operation. The initial application fee shall be computed as one-half of one percent of the gross tuition income of the registered program(s) expected during the first year, but not less than \$100 or more than \$2,000. The institution shall provide documentation to substantiate the amount of the fee, in a form specified by the division.

(B) The division also collects annual registration fees computed as one-half of one percent of the gross tuition income of the registered program(s) during the previous year, but not less than \$100 or more than \$2,000. The institution shall provide documentation to substantiate the amount of the fee, in a form specified by the division. The annual registration fee is due on the anniversary date of the institution's certificate of registration.

(C) All registration fees collected by the division will be used to enhance the administration of the Act and Rules.

(4) The institution shall submit to the division its renewal registration statement application, along with the appropriate fee, no later than thirty (30) days prior to the expiration date of the current certificate of registration.

(5) In addition to the annual registration fee, an institution failing to file a renewal registration application by the due date or filing an incomplete registration application or renewal shall pay an additional fee of \$25 for each month or part of a month after the date on which the registration statement application or renewal were due to be filed.

(6) Within thirty (30) days after receipt of an initial or renewal registration statement application and its attachments, the division shall do one of the following:

(a) issue a certificate of registration;

(b) request further information and, if needed, conduct a site visit to the institution as detailed in ~~[R152-34-11(1)]~~R152-34-10(1); or

(c) refuse to accept the registration statement based on Sections 13-34-107 and 113.

(7) Although a certificate of registration is valid for two (2) years, the division may periodically request updates of financial statements, surety requirements and the following statistical information:

(a) The number of students enrolled from September 1 through August 31;

(b) The number of students who completed and received a credential;

(c) The number of students who terminated or withdrew;

(d) The number of administrators, faculty, supporting staff, and agents; and

(e) The new catalog, information bulletin, or supplements.

(8) The institution must have, in addition to other criteria contained in this rule, sufficient financial resources to fulfill its commitments to students and staff members, and to meet its other obligations as evidenced by the following financial statements:

(a)(i) A current financial statement prepared in accordance with generally accepted accounting principles including a balance sheet, a profit and loss statement, and a statement of cash flows for the most recent fiscal year with all applicable footnotes; or

(ii) Pro forma financial statements until actual information is available when an institution has not operated long enough to complete a fiscal year; and

(b)(i) A certified fiscal audit of the institution's financial statement performed by a certified or licensed public accountant; or

(ii) A review of the institution's financial statement performed by a certified or licensed public accountant, which shall include at least a statement by the accountant that there are not material modifications that should be made to the financial statement for it to be in conformity with generally accepted accounting principles;

(9)(a) A satisfactory surety in the form of a bond, certificate of deposit, or irrevocable letter of credit must be provided by the institution before a certificate of registration will be issued by the division.

(b) The obligation of the surety will be that the institution, its officers, agents, and employees will:

(i) faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the institution and persons enrolling as students; and

(ii) conform to the provisions of the Utah Postsecondary Proprietary School Act and Rules.

(c) The bond, certificate of deposit, or letter of credit must be in a form approved by the division and issued by a company authorized to do such business in Utah.

(d)(i) The bond, certificate of deposit, or letter of credit must be payable to the division to be used for creating teach-out opportunities or for refunding tuition, book fees, supply fees, equipment fees, and other instructional fees paid by a student or potential student, enrollee, or his or her parent or guardian.

(ii) In each instance the division may determine:

(A) which of the uses listed in Subsection (9)(d)(i) are appropriate; and

(B) if the division creates teach-out opportunities, the appropriate institution to provide the instruction.

(e) An institution that closes or otherwise discontinues operation shall maintain the institution's surety until:

(i) at least one year has passed since the institution has notified the division in writing that the institution has closed or discontinued operation; and

(ii) the institution has satisfied the requirements of R152-34-9.

(10)(a) The surety company may not be relieved of liability on the surety unless it gives the institution and the division ninety calendar days notice by certified mail of the company's intent to cancel the surety.

(b) The cancellation or discontinuance of surety coverage after such notice does not discharge or otherwise affect any claim filed by a student, enrollee or his/her parent or guardian for damage resulting from any act of the institution alleged to have occurred while the surety was in effect, or for an institution's ceasing operations during the term for which tuition had been paid while the surety was in force.

(c) If at any time the company that issued the surety cancels or discontinues the coverage, the institution's registration is revoked as a matter of law on the effective date of the cancellation or discontinuance of surety coverage unless a replacement surety is obtained and provided to the division.

(11)(a) Before an original registration is issued, and except as otherwise provided in this rule, the institution shall secure and submit to the division a surety in the form of a bond, certificate of deposit or letter of credit in an amount of one hundred and eighty-seven thousand, five-hundred dollars (\$187,500) for schools expecting to enroll more than 100 separate individual students (non-duplicated enrollments) during the first year of operation, one hundred and twenty-five thousand dollars (\$125,000) for schools expecting to enroll between 50 and 99 separate individual students during the first year, and sixty-two thousand, five-hundred dollars (\$62,500) for institutions expecting to enroll less than 50 separate individual students during the first year.

(b) Institutions that submit evidence acceptable to the division that the school's gross tuition income from any source during the first year will be less than twenty-five thousand dollars (\$25,000) may provide a surety of twelve thousand, five hundred dollars (\$12,500) for the first year of operation.

(12)(a) Except as otherwise provided in this rule, the minimum amount of the required surety to be submitted annually after the first year of operation will be based on twenty-five percent of the annual gross tuition income from registered program(s) for the previous year (rounded to the nearest \$1,000), with a minimum surety amount of twelve thousand, five hundred dollars (\$12,500) and a maximum surety amount of one hundred and eighty-seven thousand, five-hundred dollars (\$187,500).

(b) The surety must be renewed each year by the anniversary date of the school's certificate of registration, and also included as a part of each two-year application for registration renewal.

(c) No additional programs may be offered without appropriate adjustment to the surety amount.

(13)(a) The institution shall provide a statement by a school official regarding the calculation of gross tuition income and written evidence confirming that the amount of the surety meets the requirements of this rule.

(b) The division may require that such statement be verified by an independent certified public accountant if the division determines that the written evidence confirming the amount of the surety is questionable.

(14) An institution with a total cost per program of five hundred dollars or less or a length of each such program of less than one month shall not be required to have a surety.

(15) The division will not register a program at a proprietary school if it determines that the educational credential associated with

the program may be interpreted by employers and the public to represent the undertaking or completion of educational achievement that has not been undertaken and earned.

(16) Acceptance of registration statements and the issuing of certificates of registration to operate a school signifies that the legal requirements prescribed by statute and regulations have been satisfied. It does not mean that the division supervises, recommends, nor accredits institutions whose statements are on file and who have been issued certificates of registration to operate.

KEY: education, postsecondary proprietary school, registration
Date of Enactment or Last Substantive Amendment: [December 22, 2006]2007

Authorizing, and Implemented or Interpreted Law: 13-2-5(1)

◆ ————— ◆

Commerce, Occupational and Professional Licensing

R156-17b

Pharmacy Practice Act Rules

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 29770
FILED: 04/02/2007, 15:01

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and State Board of Pharmacy have further reviewed the rule and need to make additional changes and clarifications as identified below.

SUMMARY OF THE RULE OR CHANGE: Throughout the rule, amendments are being proposed to change the rule from plural to singular. In Section R156-17b-102, the following definitions have been added "analytical laboratory", this definition was not included in the existing statute as a result of 2004 statute amendments and it needs to be defined; "central order entry", this is a new category of pharmacy that is off-site from the main pharmacy but is doing the business of the main pharmacy; "prescription files", this definition is a term that needs a clear definition; "refill", this definition is a term that is used frequently but needs a clear definition; "repackage", this definition is a term that needs a clear definition; "reverse distributor", this is a new category that has been previously licensed under a wholesale distributor until now; "wholesaler" and "wholesale distribution", these definitions require greater clarity. Also, the United States Pharmacopeia-National Formulary (USP-NF) in Subsection R156-17b-102(25) was updated to the most current edition. In Section R156-17b-301, added reverse distributing as a type of Class C pharmacy. A reverse distributor has been licensed as a wholesaler in the past, but needs its own category since wholesaler or distributor does not explain what their type of practice is. Also added durable medical equipment providers and central order entry pharmacies as a type of Class E pharmacies. In Subsection R156-17b-302(3)(b), added an equivalent certifying body in addition to the National Pharmacy

Technician Certification Board and added that the certificate from the certifying body must exhibit a valid date and that the certification is active. In Subsection R156-17b-303(2)(a), changed the minimum of 2,000 hours of practice in 2 years to 4 years immediately preceding application in Utah to correct a discrepancy that existed between the governing statute and this rule. In Section R156-17b-304, amendments are made to eliminate the 15 hour semester requirement of pharmacy course work and allow the pharmacy student to become licensed as a pharmacy intern upon admission into a pharmacy program. In Subsection R156-17b-308(3)(b), deleted the reference to the North American Pharmacy Licensing Exam (NAPLEX) and Multistate Jurisprudence Examination (MJPE) examinations since these examinations cannot be taken until internship hours are completed. In Subsection R156-17b-402(15), increased the fine amounts for paying rebates to practitioners or any other health care provider or entering into any agreement with a medical practitioner or any other person for the payment or acceptance of compensation for recommending the professional services of either party. In Section R156-17b-606, the amendment is to clarify that interns on duty are at a 1:1 ratio and that students on educational rotation are at a 1:2 ratio with a pharmacist. In Subsection R156-17b-610(4), added that records of an offer to counsel must be maintained for a period of five years and be available for inspection within 7-10 business days of a request for inspection.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 58-17b-101 and 58-37-1, and Subsections 58-17b-601(1), 58-1-106(1)(a), and 58-1-202(1)(a)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Updates the USP-NF (United States Pharmacopeia-National Formulary) from the USP29-NF24, 2005 edition, through Supplement 1, dated April 1, 2006 to the USP30-NF25, 2007 edition, which is official from May 1, 2007 through Supplement 1, which is official from August 1, 2007

ANTICIPATED COST OR SAVINGS TO:

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

❖ LOCAL GOVERNMENTS: The proposed amendments do not apply to local governments; therefore, no costs or savings are anticipated. The proposed amendments only apply to licensees and applicants for licensure in the various pharmacy license classifications.

❖ OTHER PERSONS: The Division does not anticipate any cost or savings to other persons as a result of these rule amendments; except the amendment made in Section R156-17b-402, which increased the administrative penalty for a defined misconduct, would only be applicable to licensees who engage in that misconduct. The Division is unable to determine how many licensees might engage in that misconduct and would therefore be subject to the increased fine amount.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division does not anticipate any cost or savings as a result of these rule amendments; except the amendment made in Section R156-17b-402, which increased the administrative penalty for a defined misconduct, would only be applicable to licensees who engage in that misconduct. The Division is unable to determine how many licensees might engage in that misconduct and would therefore be subject to the increased fine amount.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule change makes clarifying amendments, including definitions, clarification of category subtitles, the acceptance of other testing companies, and other technical changes. No fiscal impact to businesses is anticipated as a result of these clarifying amendments. In addition, this filing increases the range for fines resulting from violations of the provision against paying rebates to health care providers. Those who are found to violate this provision could pay an increased fine of approximately \$2,000 for each violation. Francine A. Giani, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2007

AUTHORIZED BY: F. David Stanley, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-17b. Pharmacy Practice Act Rule[s].**

R156-17b-101. Title.

This[ese] rule[s-are] is known as the "Pharmacy Practice Act Rule[s]".

R156-17b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 17b, as used in Title 58, Chapters 1 and 17b or this[ese] rule[s]:

(1) "ACPE" means the American Council on Pharmaceutical Education or Accreditation Council for Pharmacy Education.

(2) "Analytical laboratory":
 (a) means a facility in possession of prescription drugs for the purpose of analysis; and

(b) does not include a laboratory possessing prescription drugs used as standards and controls in performing drug monitoring or drug screening analysis if the prescription drugs are pre-diluted in a human or animal body fluid, human or animal body fluid components, organic solvents, or inorganic buffers at a concentration not exceeding one milligram per milliliter when labeled or otherwise designated as being for in-vitro diagnostic use.

(3) "Central Order Entry" means a pharmacy where functions are performed at the request of another pharmacy to perform processing functions such as dispensing, drug review, refill authorizations, and therapeutic interventions.

(~~2~~4) "Drugs", as used in this[ese] rule[s], means drugs or devices.

(~~3~~5) "Dispense", as defined in Subsection 58-17b-102(23), does not include transferring medications for a patient from a legally dispensed prescription for that particular patient into a daily or weekly drug container to facilitate the patient taking the correct medication.

(~~4~~6) "Drug therapy management" means the review of a drug therapy regimen of a patient by one or more pharmacists for the purpose of evaluating and rendering advice to one or more practitioners regarding adjustment of the regimen.

(~~5~~7) "High-risk, medium-risk, and low-risk drugs" refers to the risk to a patient's health from compounding sterile preparations, as referred to in USP-NF Chapter 797, for details of determining risk level.

(~~6~~8) "Hospice facility pharmacy" means a pharmacy that supplies drugs to patients in a licensed healthcare facility for terminal patients.

(~~7~~9) "Hospital clinic pharmacy" means a pharmacy that is located in an outpatient treatment area where a pharmacist or pharmacy intern is compounding, admixing, or dispensing prescription drugs, and where:

(a) prescription drugs or devices are under the control of the pharmacist, or the facility for administration to patients of that facility;

(b) prescription drugs or devices are dispensed by the pharmacist or pharmacy intern; or

(c) prescription drugs are administered in accordance with the order of a practitioner by an employee or agent of the facility.

(~~8~~10) "Legend drug" means any drug or device that has been determined to be unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(a) "Caution: federal law prohibits dispensing without prescription";

(b) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(c) "Rx only".

(~~9~~11) "Maintenance medications" means medications the patient takes on an ongoing basis.

(~~10~~12) "MPJE" means the Multistate Jurisprudence Examination.

(~~11~~13) "NABP" means the National Association of Boards of Pharmacy.

(~~12~~14) "NAPLEX" means North American Pharmacy Licensing Examination.

(~~13~~15) "Parenteral" means a method of drug delivery injected into body tissues but not via the gastrointestinal tract.

(16) "Prescription files" means all hard-copy and electronic prescriptions that includes pharmacist notes or technician notes, clarifications or information written or attached that is pertinent to the prescription.

(~~14~~17) "PTCB" means the Pharmacy Technician Certification Board.

(~~15~~18) "Qualified continuing education", as used in this[ese] rule[s], means continuing education that meets the standards set forth in Section R156-17b-309.

(19) "Refill" means to fill again.

(20) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug, excluding that completed by the pharmacist responsible for dispensing the product to a patient.

(21) "Reverse distributor" means a person or company that retrieves unusable or outdated drugs from a pharmacy or pharmacist for the purpose of removing those drugs from stock and destroying them.

(~~16~~22) "Sterile products preparation facility" means any facility, or portion of the facility, that compounds sterile products using aseptic technique.

(~~17~~23) "Unauthorized personnel" means any person who is not participating in the operational processes of the pharmacy who in some way would interrupt the natural flow of pharmaceutical care.

(~~18~~24) "Unit dose" means the ordered amount of a drug in a dosage form prepared for a one-time administration to an individual and indicates the name, strength, lot number and expiration date for the drug.

(~~19~~25) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 17b, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-17b-502.

(~~20~~26) "USP-NF" means the United States Pharmacopeia-National Formulary (USP [~~29~~30]-NF [~~24~~25], 200[5]7 edition, which is official from [~~January 1, 2006~~]May 1, 2007 through Supplement 1, dated [~~April 1, 2006~~]August 1, 2007, which is hereby adopted and incorporated by reference.

(27) "Wholesaler" means a wholesale distributor who supplies or distributes drugs or medical devices that are restricted by federal law to sales based on the order of a physician to a person other than the consumer or patient. The term includes a person who derives, produces, prepares or repackages drugs or medical devices that are restricted by federal law to sales based on the order of a physician for resale.

(28) "Wholesale distribution" means the distribution of drugs to persons other than consumers or patients, but does not include:

(a) sales within a company;

(b) the purchase or other acquisition of a drug by a health care facility or a pharmacy that is a member of a purchasing organization;

(c) the sale, purchase or trade of a drug or an offer to sell, purchase or trade a drug;

(i) between health care facilities or pharmacies that are under common control;

(ii) for emergency medical reasons; or

(iii) pursuant to a prescription;

(d) a transfer of drugs, in an amount not to exceed five percent of the total annual sales, by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;

(e) the distribution of drug samples by a representative of the manufacturer or distributor; or

(f) the sale, purchase or exchange of blood or blood components for transfusions.

R156-17b-103. Authority - Purpose.

This[ese] rule[s-are]is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 17b.

R156-17b-301. Pharmacy Licensure Classifications - Pharmacist-in-Charge Requirements.

In accordance with Subsection 58-17b-302(4), the classification of pharmacies holding licenses are clarified as:

(1) Class A pharmacy includes all retail operations located in Utah and requires a pharmacist-in-charge.

(2) Class B pharmacy includes an institutional pharmacy that provides services to a target population unique to the needs of the healthcare services required by the patient. All Class B pharmacies require a pharmacist-in-charge except for pharmaceutical administration facilities and methadone clinics. Examples of Class B pharmacies include:

- (a) closed door;
 - (b) hospital clinic pharmacy;
 - (c) methadone clinics;
 - (d) nuclear;
 - (e) branch;
 - (f) hospice facility pharmacy;
 - (g) veterinarian pharmaceutical facility;
 - (h) pharmaceutical administration facility; and
 - (i) sterile product preparation facility.
- (j) A retail pharmacy that prepares sterile products does not require a separate license as a Class B pharmacy.

(3) Class C pharmacy includes pharmacies located in Utah that are involved in:

- (a) manufacturing;
- (b) producing;
- (c) wholesaling;~~and~~
- (d) distributing; and
- (e) reverse distributing.

(4) Class D pharmacy includes pharmacies located outside the state of Utah. Class D pharmacies require a pharmacist-in-charge licensed in the state where the pharmacy is located and include Out-of-state mail order pharmacies. Facilities that have multiple locations must have licenses for each facility and every component part of a facility.

(5) Class E pharmacy includes those pharmacies that do not require a pharmacist-in-charge and include:

- (a) medical gases providers;~~and~~
- (b) analytical laboratories
- (c) durable medical equipment providers; and
- (d) central order entry pharmacies.

(6) All pharmacy licenses will be converted to the appropriate classification by the Division as identified in Section 58-17b-302.

(7) Each Class A and each Class B pharmacy required to have a pharmacist-in-charge shall have one pharmacist-in-charge who is employed on a full-time basis as defined by the employer, who acts as a pharmacist-in-charge for one pharmacy. However, the pharmacist-in-charge may be the pharmacist-in-charge of more than one Class A pharmacy, if the additional Class A pharmacies are not open to provide pharmacy services simultaneously.

(8) The pharmacist-in-charge shall comply with the provisions of Section R156-17b-603.

R156-17b-302. Licensure - Examinations.

(1) In accordance with Subsection 58-17b-303(1)(h), the examinations that must be successfully passed by an applicant for licensure as a pharmacist are:

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

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

(2) In accordance with Subsection 58-17b-303(3)(j), an applicant applying by endorsement is required to pass the MPJE.

(3) In accordance with Subsection 58-17b-305(1)(g), the examinations which must be passed by an applicant applying for licensure as a pharmacy technician are:

(a) the Utah Pharmacy Technician Law and Rule Examination with a passing score of at least 75 and taken within six months prior to making application for licensure; and

(b) the National Pharmacy Technician Certification Board Examination, or equivalent certifying body, with a passing score as established by the ~~[Pharmacy Technician Certification Board and taken within six months of completion of an approved education and training program]~~certifying body. The certificate must exhibit a valid date and that the certification is active.

R156-17b-303. Licensure - Pharmacist by Endorsement.

(1) In accordance with Subsections 58-17b-303(3) and 58-1-301(3), an applicant for licensure as a pharmacist by endorsement shall apply through the "Licensure Transfer Program" administered by NABP.

(2) An applicant for licensure as a pharmacist by endorsement does not need to provide evidence of intern hours if that applicant has:

(a) lawfully practiced as a licensed pharmacist a minimum of 2000 hours in the ~~two~~four years immediately preceding application in Utah;

(b) obtained sufficient continuing education credits required to maintain a license to practice pharmacy in the state of practice; and

(c) not had a pharmacist license suspended, revoked, canceled, surrendered, or otherwise restricted for any reason in any state for ten years prior to application in Utah, unless otherwise approved by the Division in collaboration with the Board.

R156-17b-304. Licensure - Education Requirements.

(1) In accordance with Subsections 58-17b-303(2) and 58-17b-304(7)(c), the credentialing agency recognized to provide certification and evaluate equivalency of a foreign educated pharmacy graduate is the Foreign Pharmacy Graduate Examination Committee of the National Association of Boards of Pharmacy Foundation, or an equivalent credentialing agency as approved by the Division.

(2) In accordance with Subsection 58-17b-304(6), ~~[the preliminary education qualification for licensure as a pharmacy intern include]~~an applicant for a pharmacy intern license shall demonstrate that he meets one of the following education criteria:

(a) ~~[a current pharmacy student who has completed at least 15 semester hours of pharmacy course work in a college or school of pharmacy accredited by the ACPE]~~current admission in a College of Pharmacy accredited by the ACPE by written verification from the Dean of the College; or

(b) a graduate ~~[who has received a]~~degree from a school or college of pharmacy which is accredited by the ACPE; or

(c) a graduate ~~degree from~~^[of] a foreign pharmacy school ~~[who has received]~~^[as established by] a certificate of equivalency from an approved credentialing agency defined in Subsection (1).

(3) In accordance with Subsection 58-17b-305(1)(f), a pharmacy technician must complete an approved program of education and training that meets the following standards:

(a) The didactic training program must be approved by the Division in collaboration with the Board and must address, at a minimum, the following topics:

- (i) legal aspects of pharmacy practice including federal and state laws and rules governing practice;
- (ii) hygiene and aseptic techniques;
- (iii) terminology, abbreviations and symbols;
- (iv) pharmaceutical calculations;
- (v) identification of drugs by trade and generic names, and therapeutic classifications;
- (vi) filling of orders and prescriptions including packaging and labeling;
- (vii) ordering, restocking, and maintaining drug inventory;
- (viii) computer applications in the pharmacy; and
- (ix) non-prescription products including cough and cold, nutritional, analgesics, allergy, diabetic testing supplies, first aid, ophthalmic, family planning, foot, feminine hygiene, gastrointestinal preparations, and pharmacy care over-the-counter drugs, except those over-the-counter drugs that are prescribed by a practitioner.

(b) This training program's curriculum and a copy of the final examination shall be submitted to the Division for approval by the Board prior to starting any training session with a pharmacy technician in training. The final examination must include questions covering each of the topics listed in Subsection (3)(a) above.

(c) Approval must be granted by the Division in collaboration with the Board before a student may start a program of study. An individual who completes a non-approved program is not eligible for licensure.

(d) The training program must require at least 180 hours of practical training supervised by a licensed pharmacist in good standing with the Division and must include written protocols and guidelines for the teaching pharmacist outlining the utilization and supervision of pharmacy technicians in training that includes:

- (i) the specific manner in which supervision will be completed; and
- (ii) an evaluative procedure to verify the accuracy and completeness of all acts, tasks and functions performed by the pharmacy technician in training.

(e) An individual must complete an approved training program and successfully pass the required examinations as listed in Subsection R156-17b-302(3) within one year from the date of the first day of the training program, unless otherwise approved by the Division in collaboration with the Board.

(i) An individual who has completed an approved program, but did not seek licensure within the one year time frame must complete a minimum of 180 hours of refresher practice in a pharmacy approved by the board if it has been more than six months since having exposure to pharmacy practice.

(ii) An individual who has been licensed as a pharmacy technician but allowed that license to expire for more than two years and wishes to renew that license must complete a minimum of 180 hours of refresher hours in an approved pharmacy under the direct supervision of a pharmacist.

(iii) An individual who has completed an approved program, but is awaiting the results of the required examinations may practice

as a technician-in-training under the direct supervision of the pharmacist for a period not to exceed three months. If the individual fails the examinations, that individual can no longer work as a technician-in-training while waiting to retake the examinations. The individual shall work in the pharmacy only as supportive personnel.

(4) An applicant for licensure as a pharmacy technician is deemed to have met the qualification for licensure in Subsection 58-17b-305(f) if the applicant:

(a) is currently licensed and in good standing in another state and has not had any adverse action taken on that license;

(b) has engaged in the practice as a pharmacy technician for a minimum of 1,000 hours in that state within the past two years or equivalent experience as approved by the Division in collaboration with the Board; and

(c) has passed and maintained current the PTCB certification or a Board approved equivalent and passed the Utah law exam.

R156-17b-308. Renewal Cycle - Procedures.

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

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

(3) An intern license may be extended upon the request of the licensee and approval by the Division under the following conditions:

(a) ~~[have]~~^[the intern] applied to the Division for a pharmacist license and to sit for the NAPLEX and MJPE examinations within three calendar months after obtaining full certification from the Foreign Pharmacy Graduate Equivalency Commission; or

(b) ~~[have passed the NAPLEX and MJPE examinations but]~~^[the intern] lacks the required number of internship hours for licensure.

(c) An individual must pass the NAPLEX and MJPE examinations and seek licensure as a pharmacist within six months of graduation and receipt of a degree from a school or college of pharmacy which is accredited by the ACPE. An internship license will not be extended beyond the six month time frame from graduation and receipt of a degree.

(4) The extended internship hours shall be under the direct supervision of a preceptor who meets the criteria established in R156-17b-306(4).

R156-17b-402. Administrative Penalties.

In accordance with Subsection 58-17b-401(6) and Sections 58-17b-501 and 58-17b-502, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply.

(1) Preventing or refusing to permit any authorized agent of the Division to conduct an inspection:

initial offense: \$500 - \$2,000

subsequent offense(s): \$5,000

(2) Failing to deliver the license or permit or certificate to the Division upon demand:

initial offense: \$100 - \$1,000

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

(3) Using the title pharmacist, druggist, pharmacy intern, pharmacy technician or any other term having a similar meaning or any term having similar meaning when not licensed to do so:

initial offense: \$500 - \$2,000

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

(4) Conducting or transacting business under a name which contains as part of that name the words drugstore, pharmacy, drugs,

medicine store, medicines, drug shop, apothecary, prescriptions or any other term having a similar meaning or in any manner advertising otherwise describing or referring to the place of the conducted business or profession when not licensed to do so:

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

(5) Buying, selling, causing to be sold, or offering for sale any drug or device which bears the inscription sample, not for resale, investigational purposes, or experimental use only or other similar words:

initial offense: \$1,000 - \$5,000
subsequent offense(s): \$10,000

(6) Using to the licensee's own advantage or revealing to anyone other than the Division, Board or its authorized representatives, any information acquired under the authority of this chapter concerning any method or process which is a trade secret:

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

(7) Illegally procuring or attempting to procure any drug for the licensee or to have someone else procure or attempt to procure a drug:

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

(8) Filling, refilling or advertising the filling or refilling of prescription drugs when not licensed do to so:

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

(9) Requiring any employed pharmacist, pharmacy intern, pharmacy technician or authorized supportive personnel to engage in any conduct in violation of this chapter:

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

(10) Being in possession of a drug for an unlawful purpose:

initial offense: \$500 - \$1,000
subsequent offense(s): \$1,500 - \$5,000

(11) Dispensing a prescription drug to anyone who does not have a prescription from a practitioner or to anyone who is known or should be known as attempting to obtain drugs by fraud or misrepresentation:

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

(12) Selling, dispensing or otherwise trafficking in prescription drugs when not licensed to do so or when not exempted from licensure:

initial offense: \$1,000 - \$5,000
subsequent offense(s): \$10,000

(13) Using a prescription drug or controlled substance for the licensee that was not lawfully prescribed for the licensee by a practitioner:

initial offense: \$100 - \$500
subsequent offense(s): \$1,000 - \$2,500

(14) Willfully deceiving or attempting to deceive the Division, the Board or its authorized agents as to any relevant matter regarding compliance under this chapter:

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

(15) Paying rebates to practitioners or any other health care provider, or entering into any agreement with a medical practitioner or any other person for the payment or acceptance of compensation for recommending the professional services of either party:

initial offense: ~~[\$500 - \$2,000]~~ \$2,500 - \$5,000
subsequent offense(s): ~~[\$2,500]~~ \$5,500 - \$10,000

(16) Misbranding or adulteration of any drug or device or the sale, distribution or dispensing of any outdated, misbranded, or adulterated drugs or devices:

initial offense: \$1,000 - \$5,000
subsequent offense(s): \$10,000

(17) Accepting back and redistributing any unused drugs, with the exception as provided in Section 58-17b-503:

initial offense: \$1,000 - \$5,000
subsequent offense(s): \$10,000

(18) Violating Federal Title II, PL 91, Controlled Substances Act or Title 58, Chapter 37, Utah Controlled Substances Act, or rules and regulations adopted under either act:

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

(19) Failure to follow USP-NF Chapter 797 guidelines:

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

(20) Failure to follow USP-NF Chapter 795 guidelines:

initial offense: \$250 - \$500
subsequent offense(s): \$500 - \$750

(21) Administering without appropriate guidelines or lawful order:

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

(22) Disclosing confidential patient information in violation of the provision of the Health Insurance Portability and Accountability Act of 1996 or other applicable law:

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

(23) Engaging in the practice of pharmacy without a licensed pharmacist designated as the pharmacist in charge:

initial offense: \$100 - \$500
subsequent offense(s): \$2,000 - \$10,000

(24) Failing to report to the Division any adverse action taken by another licensing jurisdiction, government agency, law enforcement agency or court:

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

(25) Compounding a prescription drug for sale to another pharmaceutical facility:

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

(26) Preparing a prescription drug in a dosage form which is regularly and commonly available from a manufacturer in quantities and strengths prescribed by a practitioner:

initial offense: \$500 - \$1,000
subsequent offense(s): \$2,500 - \$5,000

(27) Violating any ethical code provision of the American Pharmaceutical Association Code of Ethics for Pharmacists, October 27, 1994:

initial offense: \$250 - \$500
subsequent offense(s): \$2,000 - \$10,000

(28) Failing to comply with the continuing education requirements set forth in this~~ese~~ rule[s]:

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

(29) Failing to provide the Division with a current mailing address within 10 days following any change of address:

- initial offense: \$50 - \$100
 subsequent offense(s): \$200 - \$300
- (30) Defaulting on a student loan:
 initial offense: \$100 - \$200
 subsequent offense(s): \$200 - \$500
- (31) Failing to abide by all applicable federal and state law regarding the practice of pharmacy:
 initial offense: \$500 - \$1,000
 subsequent offense(s): \$2,000 - \$10,000
- (32) Failing to comply with administrative inspections:
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
- (33) Abandoning a pharmacy and/or leaving drugs accessible to the public:
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
- (34) Failure to return or providing false information on a self-inspection report:
 initial offense: \$100 - \$250
 subsequent offense(s): \$300 - \$500
- (35) Failure to pay an administrative fine:
 Double the original penalty amount up to \$10,000
- (36) Any other conduct which constitutes unprofessional or unlawful conduct:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
- (37) Failure to maintain an appropriate ratio of personnel:
 Pharmacist initial offense: \$100 - \$250
 Pharmacist subsequent offense(s): \$500 - \$2,500
 Pharmacy initial offense: \$250 - \$1,000
 Pharmacy subsequent offense(s): \$500 - \$5,000
- (38) Unauthorized people in the pharmacy:
 Pharmacist initial offense: \$50 - \$100
 Pharmacist subsequent offense(s): \$250 - \$500
 Pharmacy initial offense: \$250 - \$500
 Pharmacy subsequent offense(s): \$1,000 - \$2,000
- (39) Failure to offer to counsel:
 Pharmacy personnel initial offense: \$500 - \$2,500
 Pharmacy personnel subsequent offense(s): \$5,000 - \$10,000
 Pharmacy: \$2,000 per occurrence
- (40) Violations of the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division:
 initial violation: \$50 - \$100
 failure to comply within determined time: \$250 - \$500
 subsequent violations: \$250 - \$500
 failure to comply within established time: \$750 - \$1,000
- (41) Practicing or attempting to practice as a pharmacist, pharmacist intern, or pharmacy technician or operating a pharmacy without a license:
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
- (42) Impersonating a licensee or practicing under a false name:
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
- (43) Knowingly employing an unlicensed person:
 initial offense: \$500 - \$1,000
 subsequent offense(s): \$1,000 - \$5,000
- (44) Knowingly permitting the use of a license by another person:
 initial offense: \$500 - \$1,000
 subsequent offense(s): \$1,000 - \$5,000
- (45) Obtaining a passing score, applying for or obtaining a license or otherwise dealing with the Division or Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission:
 initial offense: \$100 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
- (46) Violating or aiding or abetting any other person to violate any statute, rule or order regulating pharmacy:
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
- (47) Violating or aiding or abetting any other person to violate any generally accepted professional or ethical standard:
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
- (48) Engaging in conduct that results in conviction of, or a plea of nolo contendere, or a plea of guilty or nolo contendere held in abeyance to a crime:
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
- (49) Engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
- (50) Engaging in conduct, including the use of intoxicants or drugs, to the extent that the conduct does or may impair the ability to safely engage in practice as a pharmacist, pharmacy intern or pharmacy technician:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
- (51) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician when physically or mentally unfit to do so:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
- (52) Practicing or attempting to practice as a pharmacist, pharmacy intern, or pharmacy technician through gross incompetence, gross negligence or a pattern of incompetency or negligence:
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
- (53) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician by any form of action or communication which is false, misleading, deceptive or fraudulent:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
- (54) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the individual's scope of competency, abilities or education:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
- (55) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the scope of licensure:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
- (56) Verbally, physically or mentally abusing or exploiting any person through conduct connected with the licensee's practice:
 initial offense: \$100 - \$1,000
 subsequent offense(s): \$500 - \$2,000
- (57) Failure to comply with the pharmacist-in-charge standards:

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

(58) Failure to resolve identified drug therapy management problems:

initial offense: \$500 - \$2,500
 subsequent offense: \$5,000 - \$10,000

R156-17b-606. Operating Standards - Approved Preceptor.

In accordance with Subsection 58-17b-601(1), the operating standard for a pharmacist acting as a preceptor includes:

(1) supervising more than one intern; however, a preceptor may supervise only one intern actually on duty who is working for compensation in the practice of pharmacy at any one time. Interns who are doing educational, observational rotations can be supervised at two interns to one pharmacist ratio;

(2) maintaining adequate records to document the number of internship hours completed by the intern and evaluating the quality of the intern's performance during the internship;

(3) completing the preceptor section of a Utah Pharmacy Intern Experience Affidavit found in the application packet at the conclusion of the preceptor/intern relationship regardless of the time or circumstances under which that relationship is concluded; and

(4) being responsible for the intern's actions related to the practice of pharmacy while practicing as a pharmacy intern under supervision.

R156-17b-610. Operating Standards - Patient Counseling.

In accordance with Subsection 58-17b-601(1), guidelines for providing patient counseling established in Section 58-17b-613 include the following:

(1) Based upon the pharmacist's or pharmacy intern's professional judgment, patient counseling may be discussed to include the following elements:

- (a) the name and description of the prescription drug;
- (b) the dosage form, dose, route of administration and duration of drug therapy;
- (c) intended use of the drug, when known, and expected action;
- (d) special directions and precautions for preparation, administration and use by the patient;
- (e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;
- (f) techniques for self-monitoring drug therapy;
- (g) proper storage;
- (h) prescription refill information;
- (i) action to be taken in the event of a missed dose;
- (j) pharmacist comments relevant to the individual's drug therapy, including any other information specific to the patient or drug; and
- (k) the date after which the prescription should not be taken or used, or the beyond use date.

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

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

(4) The offer to counsel shall be documented and said documentation shall be available to the Division. These records must be maintained for a period of five years and be available for inspection within 7-10 business days.

(5) Counseling shall be:

(a) provided with each new prescription drug order, once yearly on maintenance medications, and if the pharmacist deems appropriate with prescription drug refills;

(b) provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent; and

(c) communicated verbally in person unless the patient or the patient's agent is not at the pharmacy or a specific communication barrier prohibits such verbal communication.

(6) Only a pharmacist or pharmacy intern may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs.

(7) In addition to the requirements of Subsections (1) through (6) of this section, if a prescription drug order is delivered to the patient at the pharmacy, a filled prescription may not be delivered to a patient unless a pharmacist is in the pharmacy. However, an agent of the pharmacist may deliver a prescription drug order to the patient or the patient's agent if the pharmacist is absent for ten minutes or less and provided a record of the delivery is maintained and contains the following information:

- (a) date of the delivery;
- (b) unique identification number of the prescription drug order;
- (c) patient's name;
- (d) patient's phone number or the phone number of the person picking up the prescription; and
- (e) signature of the person picking up the prescription.

(8) If a prescription drug order is delivered to the patient or the patient's agent at the patient's or other designated location, the following is applicable:

- (a) the information specified in Subsection (1) of this section shall be delivered with the dispensed prescription in writing;
- (b) if prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container, the telephone number of the pharmacy and the statement "Written information about this prescription has been provided for you. Please read this information before you take this medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions."; and
- (c) written information provided in Subsection (8)(b) of this section shall be in the form of patient information leaflets similar to USP-NF patient information monographs or equivalent information.

R156-17b-614. Operating Standards - Operating Standards, Class A and B Pharmacy.

(1) In accordance with Subsection 58-17b-601(1), standards for the operations for a Class A and Class B pharmacy include:

- (a) shall be well lighted, well ventilated, clean and sanitary;
- (b) the dispensing area, if any, shall have a sink with hot and cold culinary water separate and apart from any restroom facilities. This does not apply to clean rooms where sterile products are prepared. Clean rooms should not have sinks or floor drains that expose the area to an open sewer. All required equipment shall be clean and in good operating condition;
- (c) be equipped to permit the orderly storage of prescription drugs and devices in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the product inventory;

(d) be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice to be conducted within that facility;

(e) be stocked with the quality and quantity of product necessary for the facility to meet its scope of practice in a manner consistent with the public health, safety and welfare; and

(f) be equipped with a security system to permit detection of entry at all times when the facility is closed.

(2) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator and freezer shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration or freezing.

(3) Facilities engaged in extensive compounding activities shall be required to maintain proper records and procedure manuals and establish quality control measures to ensure stability, equivalency where applicable and sterility. The following requirements shall be met:

(a) must follow USP-NF Chapter 795, compounding of non-sterile preparations;

(b) may compound in anticipation of receiving prescriptions in limited amounts;

(c) bulk active ingredients must be component of FDA approved drugs listed in the approved drug products prepared by the Center for Drug Evaluation and Research of the FDA;

(d) compounding using drugs that are not part of a FDA approved drug listed in the approved drug products prepared by the Center for Drug Evaluation and Research of the FDA requires an investigational new drug application (IND). The IND approval shall be kept in the pharmacy for five years for inspection;

(e) a master worksheet sheet shall be developed and approved by a pharmacist for each batch of sterile or non-sterile pharmaceuticals to be prepared. Once approved, a duplicate of the master worksheet sheet shall be used as the preparation worksheet sheet from which each batch is prepared and on which all documentation for that batch occurs. The master worksheet sheet shall contain at a minimum:

(i) the formula;

(ii) the components;

(iii) the compounding directions;

(iv) a sample label;

(v) evaluation and testing requirements;

(vi) sterilization methods, if applicable;

(vii) specific equipment used during preparation such as specific compounding device; and

(viii) storage requirements;

(f) a preparation worksheet sheet for each batch of sterile or non-sterile pharmaceuticals shall document the following:

(i) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;

(ii) manufacturer lot number for each component;

(iii) component manufacturer or suitable identifying number;

(iv) container specifications (e.g. syringe, pump cassette);

(v) unique lot or control number assigned to batch;

(vi) expiration date of batch prepared products;

(vii) date of preparation;

(viii) name, initials or electronic signature of the person or persons involved in the preparation;

(ix) names, initials or electronic signature of the responsible pharmacist;

(x) end-product evaluation and testing specifications, if applicable; and

(xi) comparison of actual yield to anticipated yield, when appropriate;

(g) the label of each batch prepared of sterile or non-sterile pharmaceuticals shall bear at a minimum:

(i) the unique lot number assigned to the batch;

(ii) all solution and ingredient names, amounts, strengths and concentrations, when applicable;

(iii) quantity;

(iv) expiration date and time, when applicable;

(v) appropriate ancillary instructions, such as storage instructions or cautionary statements, including cytotoxic warning labels where appropriate; and

(vi) device-specific instructions, where appropriate;

(h) the expiration date assigned shall be based on currently available drug stability information and sterility considerations or appropriate in-house or contract service stability testing;

(i) sources of drug stability information shall include the following:

(A) references can be found in Trissel's "Handbook on Injectable Drugs", 13th Edition, 2004;

(B) manufacturer recommendations; and

(C) reliable, published research;

(ii) when interpreting published drug stability information, the pharmacist shall consider all aspects of the final sterile product being prepared such as drug reservoir, drug concentration and storage conditions; and

(iii) methods for establishing expiration dates shall be documented; and

(i) there shall be a documented, ongoing quality control program that monitors and evaluates personnel performance, equipment and facilities that follows the USP-NF Chapters 795 and 797 standards.

(4) The facility shall have current and retrievable editions of the following reference publications in print or electronic format and readily available and retrievable to facility personnel:

(a) Title 58, Chapter 1, Division of Occupational and Professional Licensing Act'

(b) R156-1, General Rules of the Division of Occupational and Professional Licensing;

(c) Title 58, Chapter 17b, Pharmacy Practice Act;

(d) R156-17b, Utah Pharmacy Practice Act Rule[s];

(e) Title 58, Chapter 37, Utah Controlled Substances Act;

(f) R156-37, Utah Controlled Substances Act Rules;

(g) Code of Federal Regulations (CFR) 21, Food and Drugs, Part 1300 to end or equivalent such as the USP DI Drug Reference Guides;

(h) current FDA Approved Drug Products (orange book); and

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

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

(6) Facilities shall have a counseling area to allow for confidential patient counseling, where applicable.

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

(8) Only a licensed Utah pharmacist or authorized pharmacy personnel shall have access to the pharmacy when the pharmacy is closed.

(9) The facility shall maintain a permanent log of the initials or identification codes which identify each dispensing pharmacist by name. The initials or identification code shall be unique to ensure that each pharmacist can be identified; therefore identical initials or identification codes shall not be used.

(10) The pharmacy facility must maintain copy 3 of DEA order form (Form 222) which has been properly dated, initialed and filed and all copies of each unaccepted or defective order form and any attached statements or other documents.

(11) If applicable, a hard copy of the power of attorney authorizing a pharmacist to sign DEA order forms (Form 222) must be available to the Division whenever necessary.

(12) Pharmacists or other responsible individuals shall verify that the suppliers' invoices of legend drugs, including controlled substances, are listed on the invoices and were actually received by clearly recording their initials and the actual date of receipt of the controlled substances.

(13) The pharmacy facility must maintain a record of suppliers' credit memos for controlled substances and legend drugs.

(14) A copy of inventories required under Section R156-17b-605 must be made available to the Division when requested.

(15) The pharmacy facility must maintain hard copy reports of surrender or destruction of controlled substances and legend drugs submitted to appropriate state or federal agencies.

KEY: pharmacists, licensing, pharmacies

Date of Enactment or Last Substantive Amendment: ~~April 17, 2006~~ **2007**

Authorizing, and Implemented or Interpreted Law: 58-17b-101; 58-17b-601(1); 58-37-1; 58-1-106(1)(a); 58-1-202(1)(a)



**Commerce, Occupational and
Professional Licensing
R156-41
Speech-Language Pathology and
Audiology Licensing Act Rules**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29744

FILED: 03/29/2007, 11:16

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division needs to amend this rule to replace the term "health care assistant" as had been defined in Title 58, Chapter 62, which statute was repealed by the Legislature in S.B. 51 in the 2002 General Session, with certification as a nursing aide as defined in Rule R414-7B, the Division of Health Care Financing's Nurse Aide Training and Competency Evaluation Program. (DAR NOTE: S.B. 51 (2002) is found at Chapter 290, Laws of Utah 2002, and was effective 05/06/2002.)

SUMMARY OF THE RULE OR CHANGE: Throughout the rule, amendments are being proposed to change the rule from plural to singular. In Subsection R156-41-601(1)(b), amendments are made to replace the term "health care assistant" with certification as a nursing aide as defined in Rule R414-7B. The certified nursing aide has additional health education that a health care assistant did not possess and therefore, the aide should be able to fulfill the requirements of a speech-language pathology or audiology aide.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-41-1 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 of approximately \$75 to reprint the rule once the proposed changes are made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ **LOCAL GOVERNMENTS:** The proposed amendments do not apply to local governments; therefore, no costs or savings are anticipated. The proposed amendments only apply to licensees and applicants for licensure as a speech-language pathologist, audiologist or speech-language pathologist/audiologist.

❖ **OTHER PERSONS:** The Division does not anticipate any cost or savings to other persons as a result of these rule amendments. However, as a result of the proposed amendments in Section R156-41-601, a certified nursing aide may qualify to practice as a speech-language pathology or audiology aide and potentially obtain employment in the state.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division does not anticipate any costs to affected persons as a result of these rule amendments. However, as a result of the proposed amendments in Section R156-41-601, a certified nursing aide may qualify to practice as a speech-language pathology or audiology aide and potentially obtain employment in the state.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated with this rule filing, which removes a health care assistant classification that was repealed in the 2002 Legislative Session and replaces it with a certified nurse aide classification used by the State Division of Health Care Financing. Francine A. Giani, 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:

Clyde Ormond at the above address, by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2007

AUTHORIZED BY: F. David Stanley, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-41. Speech-Language Pathology and Audiology Licensing Act Rule[s].**

R156-41-101. Title.

Th[ese]is rule[s—are]is known as the "Speech-Language Pathology and Audiology Licensing Act Rule[s]".

R156-41-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 41, as used in Title 58, Chapters 1 and 41, or th[ese]is rule[s]:

(1) "Audio electronic equipment" as used in Subsection 58-41-2(3) means equipment proven in use, accepted and standard to the profession, of known quality and function, well maintained, in current calibration and presenting no hazard to the operator or client.

(2) "Direct supervision" as used in Subsections 58-41-2(5)(c), 58-41-2(20)(c), and th[ese]is rule[s], means supervision requiring the supervisor or substitute supervisor to be physically present in the same facility where an action is performed by the aide. The supervisor is to provide face to face observation and evaluation of the aide at least 25% of the time. The supervisor or substitute supervisor shall be available for immediate consultation at all times when the aide is engaged with a patient.

(3) "Evoked potentials evaluation", as used in Subsection 58-41-2(4), includes neurophysiological intraoperative monitoring.

(4) "Professional training" as set forth in Subsection 58-41-12(2) means continuing professional education that meets the standards set forth in Section R156-41-304.

(5) "Substitute supervisor", as used in th[ese]is rule[s], means a licensee who is designated by the supervisor to provide limited supervision to an aide. The substitute supervisor shall be licensed in the same discipline in which the aide is functioning.

(6) "Supervision", as used in th[ese]is rule[s], means a supervisor-supervisee relationship requiring the supervisor to be responsible for the professional performance by the supervisee. This includes a substitute supervisor-supervisee relationship.

(7) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 41, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-41-502.

R156-41-103. Authority - Purpose.

Th[ese]is rule[s—are] is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 41.

R156-41-601. Speech-Language Pathology and Audiology Aides.

(1) In accordance with Subsection 58-41-2(5), an individual licensed to engage in practice as a speech-language pathologist or audiologist may employ as an aide an individual who has completed or obtained the following:

(a) graduation from an accredited high school or obtained a certificate of equivalency approved by the division; and

(b) ~~registration as a health care assistant in accordance with Title 58, Chapter 62~~ certification as a nursing aide in accordance with R414-7B, the State Division of Health Care Financing's Nurse Aide Training and Competency Evaluation Program.

(2) A licensee supervising an aide shall be responsible for the direct supervision of an aide.

(3) A licensee supervising an aide must have a current written utilization plan outlining the specific manner in which the aide will be employed and the manner in which the aide will be supervised.

(4) A licensee shall be permitted to supervise not more than three aides at any one time.

(5) An aide shall not engage in the following:

(a) preparing diagnostic statements or clinical management plans, strategies or procedures;

(b) communicating obtained observations or results to anyone other than the aide's supervising speech-language pathologist or audiologist;

(c) determining case selection;

(d) independently composing or signing clinical reports; except an aide may enter progress notes into the patient's file reflecting the results of the aide's assigned duties;

(e) independently diagnosing, treating, discharging of patient, or advising of patient disposition; and

(f) referral of a patient to other professionals or agencies.

(6) Upon the request of the division, a licensee who employs an aide must provide documentation that the aide has met the qualifications as listed in Subsection (1), and that the aide is functioning under a utilization plan.

**KEY: licensing, speech-language pathology, audiology
Date of Enactment or Last Substantive Amendment: ~~October 18, 2005~~ 2007**

Notice of Continuation: February 1, 2007

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-41-1

◆ ————— ◆
**Commerce, Real Estate
R162-1-2
Definitions**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29738

FILED: 03/27/2007, 08:22

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to alphabetize the definitions in the rule, move existing definitions from another rule to this one, and add definitions related to terms used in connection with prelicensing and continuing education. A definition of "real estate sales agent" that is unnecessary because it is defined in statute is deleted.

SUMMARY OF THE RULE OR CHANGE: The definitions of "credit hour", "distance education", "provider", and "traditional education" are added. The definition of "school" is moved from Rule R162-8. The definition of "real estate sales agent" is deleted. The definition of "DBA" is moved to be in the correct alphabetical position. (DAR NOTE: The proposed amendment to Rule R162-8 is under DAR No. 29719 in this issue, April 15, 2007, of the Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2-5.5(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Defining terms used in the administrative rules has no impact on the State budget.
- ❖ LOCAL GOVERNMENTS: None--Defining terms used in the state administrative rules relating to real estate agent licensing and conduct has no effect on local governments.
- ❖ OTHER PERSONS: None--Defining terms used in the administrative rules does not cost or save other persons money.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only persons required to comply with these administrative rules are real estate licensees and real estate education providers. Defining terms that are used in those rules does not cost these persons any money.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There appears to be no fiscal impact to businesses as a result of this rule filing, which amends and clarifies applicable definitions. Francine A. Giani, 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 801-366-0145, by FAX at 801-366-0315, or by Internet E-mail at swismer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2007

AUTHORIZED BY: Derek Miller, Director

R162. Commerce, Real Estate.**R162-1. Authority and Definitions.****R162-1-2. Definitions.**

1.2. Terms used in these rules are defined as follows:

1.2.1. Active Licensee: One who: (a) has paid all applicable license fees; and (b) is affiliated with a principal brokerage.

1.2.2. Branch Manager: An associate broker who manages a branch office under the supervision of the principal broker.

1.2.3. Branch Office: A real estate office affiliated with and operating under the same name as a Principal Brokerage but located at an address different from the main office.

1.2.4. Business Opportunity: The sale, lease, or exchange of any business which includes an interest in real estate.

1.2.5. Brokerage: A real estate sales brokerage or a property management company.

1.2.6. Certification: The authorization issued by the Division to: (a) establish and operate a real estate school which provides courses approved for licensing requirements, (b) provide courses approved for renewal requirements, or (c) function as a real estate instructor.

1.2.7. Company Registration: A Registration issued to a corporation, partnership, Limited Liability Company, association or other legal entity of a real estate brokerage. A Company Registration is also issued to an individual or an individual's professional corporation.

1.2.8. Continuing Education: Professional education required as a condition of renewal in accordance with Subsection 61-2-9(2)(a).

1.2.9. Credit hour: 50 minutes of instruction within a 60 minute period.

1.2.10 DBA (doing business as): The authority issued by the Division of Corporations and Commercial Code to transact business under an assumed name.

1.2.11. Distance Education: education in which the instruction does not take place in a traditional classroom setting, but through other interactive instructional methods where teacher and student are separated by distance and sometimes by time, including computer conferencing, video conferencing, interactive audio, interactive computer software, Internet-based instruction, and other interactive online courses.

1.2.[9]12. Expired License: A license will be deemed "expired" when the licensee fails to pay the fees due by the close of business on the expiration date. If the expiration date falls on a Saturday, Sunday or holiday the effective date of expiration shall be the next business day.

1.2.[40]13. Inactivation: The placing of a license on an inactive status, either voluntarily or involuntarily.

1.2.[40]13.1. Voluntary inactivation means the process initiated by an active licensee terminating affiliation with a principal brokerage.

1.2.[40]13.2. Involuntary inactivation means the process of (a) inactivation of a sales agent or associate broker license resulting from the suspension, revocation, or non-renewal of the license of the licensee's principal broker, or death of the licensee's principal broker, or (b) inactivation of a sales agent or associate broker license by a

principal broker when the licensee is unavailable to execute the transfer forms.

1.2.~~14~~14. Inactive Licensee: One who: (a) has paid all applicable license fees; and (b) is not affiliated with a principal brokerage.

1.2.~~15~~15. Net listing means a listing wherein the amount of real estate commission is the difference between the selling price of the property and a minimum price set by the seller.

1.2.~~16~~16. Non-resident Licensee: A person who holds a Utah real estate principal broker, associate broker, or sales agent license whose primary residence is in a jurisdiction other than Utah.

1.2.~~17~~17. Principal Brokerage: The main real estate or property management office of a principal broker.

1.2.~~18~~18. Property Management: The business of providing services relating to the rental or leasing of real property, including: advertising, procuring prospective tenants or lessees, negotiating lease or rental terms, executing lease or rental agreements, supervising repairs and maintenance, collecting and disbursing rents.

1.2.19 Provider: any person, professional organization, or other entity that is approved by the Division of Real Estate to teach Division-approved continuing education courses.

1.2.~~20~~20. Regular Salaried Employees: For purposes of this Chapter, "regular salaried employee" shall mean an individual employed other than on a contract basis, who has withholding taxes taken out by the employer.

1.2.~~21~~21. Reinstatement: To restore to active or inactive status, a license which has expired or been suspended.

1.2.~~22~~22. Reissuance: The process by which a licensee may obtain a license following revocation.

1.2.~~23~~23. Renewal: To extend an active or inactive license for an additional licensing period.

~~1.2.20. DBA (doing business as): The authority issued by the Division of Corporations and Commercial Code to transact business under an assumed name.~~

~~1.2.21. Real Estate Sales Agent or Sales Agent: Any person employed or engaged as an independent contractor by or on behalf of a licensed Principal Broker to provide the acts set out in Subsections 61-2-2(12) or 61-2-2(13).~~ 1.2.24 School: For the purposes of Rules R162-8 and R162-9, "school" includes:

(a) Any college or university accredited by a regional accrediting agency which is recognized by the United States Department of Education;

(b) Any community college, vocational-technical school, state or federal agency or commission;

(c) Any nationally recognized real estate organization, any Utah real estate organization, or any local real estate organization which has been approved by the Real Estate Commission; and

(d) Any proprietary real estate school.

1.2.25 Traditional Education: education in which instruction takes place between an instructor and students where all are physically present in the same classroom.

KEY: real estate business, licensing

Date of Enactment or Last Substantive Amendment: ~~April 23, 1998~~2007

Notice of Continuation: June 3, 2002

Authorizing, and Implemented or Interpreted Law: 61-2-5.5



Commerce, Real Estate R162-3-6 Renewal and Reinstatement

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE No.: 29736

FILED: 03/26/2007, 17:12

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to shorten and simplify the provisions related to license renewal and reinstatement and to change the provision related to the Division of Real Estate's "core" course requirement.

SUMMARY OF THE RULE OR CHANGE: Provisions detailing what information will be on the renewal notice and to where it will be mailed are deleted, as are those related to when an application will be considered timely and the extension of a grace period for an incomplete application for renewal. The provision related to the "core" courses is changed so that the Division of Real Estate is not the only provider of the required "core" courses. The provision making it an actionable offense if a broker's failure to renew on time causes the inactivation of the broker's sales agents is deleted. The balance of the current rule is simplified and reorganized.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 61-2-5.5(1)(a)(i) and (ii)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The Division of Real Estate will no longer be the only provider of the "core" courses. If the Division chooses not to provide the "core" courses but leave it to private providers to supply the "core" courses, the Division of Real Estate budget will be saved the cost of providing the "core" courses.

❖ **LOCAL GOVERNMENTS:** None--Local governments are not licensed real estate sales agents and brokers, and therefore the rules related to renewal and reinstatement of these licenses have no impact on local governments. Local governments are not providers of continuing education for real estate licensees, and therefore, the change in the provisions related to "core" courses will not have any impact on local governments.

❖ **OTHER PERSONS:** The only persons who are impacted by the rules on license renewal and reinstatement are the holders of those licenses. The simplification of the rules related to renewal and reinstatement should neither cost nor save these persons any money. The only persons who are affected by the change to the provisions related to the "core" courses are the providers of continuing education. By broadening the rules so that the "core" courses may be supplied by private enterprise, private education providers will potentially have a new source of income.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only persons who are impacted by the rules on license renewal and reinstatement are the holders of those licenses. The simplification of the rules related to renewal and reinstatement should not cost licensees any money. The only persons affected by the change to the provisions related to the "core" courses are the providers of real estate continuing education. Broadening the rules so that private providers may supply the "core" courses will not cost education providers any money and will actually give them a new source of potential income.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing simplifies the license renewal and reinstatement provisions. The filing also permits private providers to teach core courses, which could have a positive fiscal impact for such businesses. No further fiscal impact to businesses is anticipated. Francine A. Giani, 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 801-366-0145, by FAX at 801-366-0315, or by Internet E-mail at swismer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2007

AUTHORIZED BY: Derek Miller, Director

R162. Commerce, Real Estate.

R162-3. License Status Change.

R162-3-6. Renewal and Reinstatement.

~~[3.6.1 A license renewal notice shall be sent by the Division to the licensee at the mailing address shown on the division records. The renewal notice shall specify the requirements for renewal and shall require that the licensee document or certify that the requirements have been met. The licensee must apply to renew and pay all applicable fees on or before the expiration shown on the notice. Renewal of an active Principal Broker license requires certification in the form required by the division that the business name under which the licensee is operating is still current and in good standing with the Division of Corporations and that all real estate trust accounts are current.~~

~~3.6.1.1 Continuing education requirement. All licensees with active licenses who are applying to renew shall have completed the 12 hours of approved continuing education required by Section 61-2-9 prior to submitting their applications for renewal.~~

~~3.6.1.1.1 Continuing education requirement for new licensees. During a licensee's first license term, the licensee's 12 hour continuing education requirement shall consist of the Division's 3 hour "Core Course" and a 9 hour live "New Agent Course." The Commission shall approve a standard course outline for the "New Agent Course."~~

~~3.6.1.2 Applications filed by mail. The division will consider a properly completed application that has been postmarked on or before the expiration date shown on the renewal notice to have been timely filed.~~

~~3.6.1.3 Documentation of continuing education. Any licensee who renews on line on the division's web site and certifies that the required continuing education has been completed shall maintain the original course completion certificates supporting that certification for three years following renewal. The licensee shall produce those certificates for audit upon request by the division.~~

~~3.6.1.4 Misrepresentation on application. Any misrepresentation in an application for renewal will be considered a separate violation of these rules and separate grounds for disciplinary action against the licensee, regardless of whether the application is filed with the division by mail or in person, or made on line.~~

~~3.6.2. A license expires if it is not renewed on or before its expiration date. When an active license expires, the licensee's affiliation with a principal brokerage automatically terminates.~~

~~3.6.3 The license may be renewed for a period of thirty days after the expiration date by meeting all of the conditions for renewal and, in addition, paying a non-refundable late fee, and, if the licensee will be actively licensed, submitting the forms required by the Division to activate a license.~~

~~3.6.4. After this 30 day period and until six months after the expiration date the license may be reinstated by meeting all of the conditions for renewal and, in addition: a) paying a non-refundable late fee and a non-refundable reinstatement fee; b) submitting proof of the 12 hours of continuing education that is required to renew a license and the 12 additional hours of continuing education required by Section 61-2-9(2)(e)(ii); and c) if the licensee will be actively licensed, submitting the forms required by the Division to activate a license.~~

~~3.6.4.1 Additional Continuing Education Hours for Reinstatement. Courses that have been approved by the Division for continuing education purposes in the following topics will be acceptable toward the additional 12 hours of continuing education required for reinstatement by Section 61-2-9(2)(e)(ii): agency, contract law, the Real Estate Purchase Contract and other state approved forms, ethics, Utah law, and closing/settlement.~~

~~3.6.4.1.1 Continuing education hours that are submitted to reinstate a license may not be the same continuing education hours that were submitted toward a licensee's prior renewal. Continuing education hours that are submitted to reinstate a license may not be used again toward the continuing education required on the licensee's next renewal.~~

~~3.6.5. If the licenses of licensees affiliated with a principal broker are inactivated because of the principal broker's failure to renew his license when due, the failure to renew the license in a timely manner shall be separate grounds for disciplinary action against the principal broker.~~

~~3.6.6. If the Division has received a licensee's application for renewal in a timely manner but the information is incomplete, the division may grant the licensee a 15-day grace period to complete the application, during which time the division shall extend the license.~~

~~3.6.7. Education credit will be given for a course taken in another state provided the course has been certified for continuing education purposes in another state. These courses shall meet the Utah~~

requirement of protection of the public, except that credit will not be given for education where the subject matter pertains to another state's license laws.

~~3.6.7.1. Prior approval must be obtained from the division before credit will be granted. Evidence must be provided to the Division that the course was certified by another licensing jurisdiction at the time the course was taken.~~ 3.6.1 Licenses are valid for a period of two years. A license may be renewed by submitting all forms and fees required by the Division prior to the expiration date of the current license. Licenses not properly renewed shall expire on the expiration date.

3.6.1.1 A license may be reinstated for a period of thirty days after expiration by complying with all requirements for a timely renewal and paying a non-refundable late fee.

3.6.1.2 A license may be reinstated after thirty days and within six months after expiration by complying with all requirements for a timely renewal and paying a non-refundable reinstatement fee and submitting proof of having completed 12 hours of continuing education in addition to the 12 hours of continuing education required to renew a license on active status.

3.6.1.3 A license that has been expired for more than six months may not be reinstated and an applicant must apply for a new license following the same procedure as an original license.

3.6.2 Renewal Requirements.

3.6.2.1 Continuing Education. To renew a license on active status an applicant must submit to the division proof of having completed, during the previous license period, 12 hours of continuing education from courses certified by the division.

3.6.2.1.1 During the first license period, a licensee must take the 12-hour "New Sales Agent Course" certified by the division.

3.6.2.1.2 During subsequent license periods, a licensee must take at least 6 hours of continuing education from courses certified by the division as "core" as defined in Rule R162.9.2.1. A licensee must take any remaining hours of continuing education from courses certified by the division as "elective" as defined in Rules R162.9.2.2 - 9.2.2.10.

3.6.2.1.2.1 The division may grant continuing education credit for non-certified courses submitted by a renewal applicant in the form required by the division, if the course was not required by these rules to be certified and the division determines that the course meets the continuing education objectives listed in Rule R162.9.2.

3.6.2.1.3 Licensees must retain original course completion certificates for three years following renewal and produce those certificates when audited by the division.

3.6.2.2 Principal Broker. To renew a principal broker license on active status an applicant must certify that the business name under which the licensee is operating is current and in good standing with the Division of Corporations and that all real estate trust accounts are current and in compliance with Rule R162-4.2.

3.6.2.3 Any misrepresentation in an application for renewal will be considered a separate violation of these rules and separate grounds for disciplinary action against the licensee.

KEY: real estate business

Date of Enactment or Last Substantive Amendment: ~~November 16, 2006~~ 2007

Notice of Continuation: June 3, 2002

Authorizing, and Implemented or Interpreted Law: 61-2-5.5

◆ ————— ◆

Commerce, Real Estate R162-4-1 Records and Copies of Documents

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE No.: 29739

FILED: 03/27/2007, 08:25

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: It is necessary to update Subsection R162-4-1(4.1.4) to correspond with current terminology used in the industry. The part of a real estate closing where the parties sign and deliver documents and deliver monies to the escrow agent is now called "settlement" instead of "closing". "Closing" now refers to the entire process of finalizing a transaction, including settlement, recordation of documents, and payment of the seller.

SUMMARY OF THE RULE OR CHANGE: The word "closing" is replaced by "settlement" where appropriate in Subsections R162-4-1(4.1.4), R162-4-1(4.1.4.1), R162-4-1(4.1.4.2), and R162-4-1(4.1.4.3).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2-5.5(1)(a)(viii)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** None--Updating a rule to use current terminology has no financial impact on state government.
- ❖ **LOCAL GOVERNMENTS:** None--Updating a rule to use current terminology has no financial impact on local governments.
- ❖ **OTHER PERSONS:** None--Updating a rule to use current terminology has no financial impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only persons affected by this rule are real estate brokers and their authorized representatives. Changing the terminology used in the rule to current terminology does not increase compliance costs for these persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There appears to be no fiscal impact to businesses as a result of this rule filing, which merely updates the provisions with current terminology used in the industry. Francine A. Giani, Executive Director

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

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at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Shelley Wismer at the above address, by phone at 801-366-0145, by FAX at 801-366-0315, or by Internet E-mail at swismer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2007

AUTHORIZED BY: Derek Miller, Director

R162. Commerce, Real Estate.**R162-4. Office Procedures - Real Estate Principal Brokerage.****R162-4-1. Records and Copies of Documents.**

4.1. The principal broker must maintain in his office and make available for inspection and copying by the Division all records pertaining to a real estate transaction for a period of at least three calendar years following the year in which an offer was rejected or the transaction either closed or failed.

4.1.1. Location of Records. Unless otherwise authorized by the Division in writing, the business records of the principal broker shall be maintained at his principal business location or, where applicable, at the branch office. If a brokerage closes its operation the principal broker must, within ten days after the closure, notify the Division in writing of where the records will be maintained in order to comply with R162-4.1 above. If a brokerage files for bankruptcy, the principal broker must, upon filing, notify the Division in writing of the filing and the current location of brokerage records.

4.1.2. Transaction Identification. All transactions, whether pending, closed or failed, must be numbered consecutively and identifiable in a manner that, in the opinion of the representative of the Division, the transaction can be readily followed in all pertinent documents. A sequential transaction number is to be assigned to every offer, and a separate transaction file is to be maintained for every offer, including rejected offers involving funds deposited to the brokerage trust account. A sequential transaction number need not be assigned to rejected offers which do not involve funds deposited to trust. The principal broker may, at his option, maintain a separate transaction file for each rejected offer which does not involve funds deposited to trust or keep such rejected offers in a single file.

4.1.3. Statement of Account. At the expiration of 30 days after an offer has been made by a buyer and accepted by a seller, either party may demand, and the principal broker must furnish, a detailed statement showing the current status of the transaction. On demand by either party, the principal broker must furnish an updated statement at 30-day intervals thereafter until the transaction is closed.

4.1.4. Closing/Settlement Statements. A principal broker charged with closing a sale shall cause to be prepared and delivered to the buyer and seller, upon completion of a transaction, a detailed closing/settlement statement of all their respective accounts showing receipts and disbursement.

4.1.4.1. Closing/Settlement statements for all real estate transactions in which a real estate principal broker participates must show the following: the date of closing/settlement; the total purchase price of the property; an itemization of all adjustments, money, or things of value received or paid, and to whom each item is credited or debited. The dates of the adjustments must be shown if they are not the

same as the date of the closing/settlement. Also shown must be the balances due from the respective parties to the transaction, and the names of the payees, makers, and assignees of all notes paid, made, or assumed. The statements furnished to each party to the transaction must contain an itemization of credits and debits as pertain to each party.

4.1.4.2. The principal broker or his authorized representative must attend all closings/settlements. Regardless of who closes the transaction, a ~~The~~ principal broker is responsible for the content and accuracy of all closing/settlement statements prepared for the signature of the party with whom the principal broker has an agency relationship in that transaction ~~regardless of who closes the transaction~~.

4.1.4.3. ~~The~~ A principal broker who closes a closing the transaction must show proof of delivery of the closing/settlement statement(s) to the buyer and seller. Signatures of the buyer and seller on the file copy of the closing/settlement statement or a copy of a transmittal letter sent by certified mail, return receipt requested, when signatures are not attainable, will satisfy this requirement.

4.1.5. Death or Disability of Principal Broker: Upon the death or inability of a principal broker to act as a principal broker the following procedures shall apply:

4.1.5.1. In the case of a corporation, partnership, Limited Liability Company, association, or other legal entity the provisions of R162-2-3.3.2. shall apply.

4.1.5.2. In the case of a sole proprietor all brokerage activity must cease and a family attorney or representative shall: (1) notify the Division and all licensees affiliated with the principal broker in writing of the date of death or disability; (2) advise the Division as to the location where records will be stored; (3) notify each listing and management client in writing to the effect that the principal broker is no longer in business and that the client may enter a new listing or management agreement with the firm of his choice; (4) notify each party and cooperating broker to any existing contracts; and (5) retain trust account monies under the control of the administrator, executor or co-signer on the account until all parties to each transaction agree in writing to disposition or until a court of competent jurisdiction issues an order relative to disposition.

KEY: real estate business

Date of Enactment or Last Substantive Amendment: ~~October 16, 2002~~ **2007**

Notice of Continuation: June 3, 2002

Authorizing, and Implemented or Interpreted Law: 61-2-5.5



Commerce, Real Estate
R162-6-1
Improper Practices

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 29769
FILED: 04/02/2007, 13:54

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 199 (2007 General Session) amended the real estate licensing law to create a category of licensee who is licensed both as a real

estate agent and a title insurance provider. Although a dual licensee may hold both a real estate license and a title insurance license, it is necessary to clarify that a dual licensee may not act as a real estate agent and a provider of settlement services in the same transaction. (DAR NOTE: S.B. 199 (2007) is found at Chapter 325, Laws of Utah 2007, and will be effective 04/30/2007.)

SUMMARY OF THE RULE OR CHANGE: A statement is added that a licensee of the Division of Real Estate may not act as a real estate agent or broker in the same transaction in which the person also acts as a provider of settlement-related services.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2-5.5(1)(a)(viii)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Whether or not a real estate agent or broker may also provide other settlement-related services in a transaction has no effect on the state budget.
- ❖ LOCAL GOVERNMENTS: None--Local governments do not act as either real estate agents or the providers of settlement-related services. Therefore, this rule will have no impact on local governments.
- ❖ OTHER PERSONS: The only persons who would be affected by this rule are persons who would act as both the real estate agent or broker and a provider of settlement-related services in the same transaction. Some providers of settlement-related services, such as appraisers and mortgage loan officers, are already prohibited by the standards of conduct of their professions from acting in a dual capacity in the same transaction. Therefore, as a practical matter, only real estate licensees who are also title insurance providers and independent escrow agents would be affected by this rule. The fiduciary duty that a real estate licensee owes to his principal in a transaction would make it problematic for the real estate licensee to also provide other settlement-related services for his own profit. In addition, it would be difficult for real estate licensees acting in a dual capacity to do so and act in compliance with the federal Real Estate Settlement Procedures Act (RESPA). Despite these difficulties, there may be some number of real estate agents and brokers who might try to act in a dual capacity in the same transaction. These persons could potentially lose a source of additional income from title insurance or independent escrow business if this rule goes into effect. However, since the number of these persons is unknown and the amount of the business that would potentially be lost is unknown, the Division cannot calculate the potential cost of this rule to these persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As stated in "other persons" above, the only persons who would be affected by this rule change would be those real estate agents and brokers who might try to act as independent escrow agents or providers of title insurance in the same transaction in which they are acting as real estate agents or brokers. These persons could potentially lose a source of additional income if this rule goes into effect. However, since the number of these persons is unknown and the amount of business that they would potentially lose is unknown, the Division cannot calculate the potential cost of this rule to these persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is foreseen from this rule filing other than those addressed in the rule summary. Francine A. Giani, 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 801-366-0145, by FAX at 801-366-0315, or by Internet E-mail at swismer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2007

AUTHORIZED BY: Derek Miller, Director

R162. Commerce, Real Estate.

R162-6. Licensee Conduct.

R162-6-1. Improper Practices.

6.1.1. False [d]Devices. A licensee shall not propose, prepare, or cause to be prepared any document, agreement, closing statement, or any other device or scheme, which does not reflect the true terms of the transaction, nor shall a licensee knowingly participate in any transaction in which a similar device is used.

6.1.1.1. Loan Fraud. A licensee shall not participate in a transaction in which a buyer enters into any agreement that is not disclosed to the lender, which, if disclosed, may have a material effect on the terms of the granting of the loan.

6.1.1.2. Double Contracts. A licensee shall not use or propose the use of two or more purchase agreements, one of which is not made known to the prospective lender or loan guarantor.

6.1.2. Signs. It is prohibited for any licensee to have a sign on real property without the written consent of the property owner.

6.1.3. Licensee's Interest in a Transaction. A licensee shall not either directly or indirectly buy, sell, lease or rent any real property as a principal, without first disclosing in writing on the purchase agreement or the lease or rental agreement his true position as principal in the transaction. For the purposes of this rule, a licensee will be considered to be a "principal in the transaction" if he: a) is himself the buyer or the lessee in the transaction; b) has any ownership interest in the property; c) has any ownership interest in the entity that is the buyer, seller, lessor or lessee; or d) is an officer, director, partner, member, or employee of the entity that is the buyer, seller, lessor or lessee.

6.1.3.1. Disclosure of Licensed Status. Regardless of whether a person's license is in active or inactive status, a licensee shall not fail to disclose in writing on any agreement to buy, sell, lease or rent any real property as a principal that the licensee holds a Utah real estate license.

6.1.4. Listing Content. The real estate licensee completing a listing agreement is responsible to make reasonable efforts to verify the accuracy and content of the listing.

6.1.4.1. Net listings are prohibited and shall not be taken by a licensee.

6.1.5. Advertising. This rule applies to all advertising materials, including newspaper, magazine, Internet, e-mail, radio, and television advertising, direct mail promotions, business cards, door hangers, and signs.

6.1.5.1. Any advertising by active licensees that does not include the name of the real estate brokerage as shown on Division records is prohibited except as otherwise stated herein.

6.1.5.2. If the licensee advertises property in which he has an ownership interest and the property is not listed, the ad need not appear over the name of the real estate brokerage if the ad includes the phrase "owner-agent" or the phrase "owner-broker".

6.1.5.3. Names of individual licensees may be advertised in addition to the brokerage name. If the names of individual licensees are included in advertising, the brokerage must be identified in a clear and conspicuous manner. This requirement may be satisfied by identifying the brokerage in lettering which is at least one-half the size of the lettering which identifies the individual licensees.

6.1.5.4. Advertising teams, groups, or other marketing entities which are not licensed as brokerages is prohibited if the advertising states "owner-agent" or "owner-broker" instead of the brokerage name.

6.1.5.5. Advertising teams, groups, or other marketing entities which are not licensed as brokerages is permissible in advertising which includes the brokerage name upon the following conditions:

(a) The brokerage must be identified in a clear and conspicuous manner. This requirement may be satisfied by identifying the brokerage in lettering which is at least one-half the size of the lettering which identifies the team, group, or other marketing entity; and

(b) The advertising shall clearly indicate that the team, group, or other marketing entity is not itself a brokerage and that all licensees involved in the entity are affiliated with the brokerage named in the advertising.

6.1.5.6. If any photographs of personnel are used, the actual roles of any individuals who are not licensees must be identified in terms which make it clear that they are not licensees.

6.1.5.7. Any artwork or text which states or implies that licensees have a position or status other than that of sales agent or associate broker affiliated with a brokerage is prohibited.

6.1.5.8. Under no circumstances may a licensee advertise or offer to sell or lease property without the written consent of the owner of the property or the listing broker. Under no circumstances may a licensee advertise or offer to sell or lease property at a lower price than that listed without the written consent of the seller or lessor.

6.1.5.9. If an active licensee advertises to purchase or rent property, all advertising must contain the name of the licensee's real estate brokerage as shown on Division records.

6.1.6. Double Commissions. In order to avoid subjecting the seller to paying double commissions, licensees must not sell listed properties other than through the listing broker. A licensee shall not subject a principal to paying a double commission without the principal's informed consent.

6.1.6.1. A licensee shall not enter or attempt to enter into a concurrent agency representation agreement with a buyer or a seller, a lessor or a lessee, when the licensee knows or should know of an existing agency representation agreement with another licensee.

6.1.7. Retention of Buyer's Deposit. A principal broker holding an earnest money deposit shall not be entitled to any of the deposit without the written consent of the buyer and the seller.

6.1.8. Unprofessional [e]Conduct. No licensee shall engage in any of the practices described in Section 61-2-2, et seq., whether acting as agent or on his own account, in a manner which fails to conform with accepted standards of the real estate sales, leasing or management industries and which could jeopardize the public health, safety, or welfare and includes the violation of any provision of Section 61-2-2, et seq. or the rules of this chapter.

6.1.9. Finder's Fees. A licensee may not pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect in a real estate transaction, except as provided in this rule.

6.1.9.1. Token [g]Gifts. A licensee may give a gift valued at \$50 or less to an individual in appreciation for an unsolicited referral of a prospect which resulted in a real estate transaction.

6.1.10. Referrals and Provision of Settlement Services. ~~[fees from lenders].~~

6.1.10.1 Referrals of Prospects to Lender or Mortgage Broker. A licensee may not receive a referral fee from a lender or a mortgage broker.

6.1.10.2 Providing Settlement Services. A licensee may not act as a real estate agent or broker in the same transaction in which the licensee also acts as a mortgage loan officer or loan originator, appraiser, escrow agent, or provider of title services.

6.1.11. Failure to [h]Have [w]Written [a]Agency [a]Agreement. To avoid representing more than one party without the informed consent of all parties, principal brokers and licensees acting on their behalf shall have written agency agreements with their principals. The failure to define an agency relationship in writing will be considered unprofessional conduct and grounds for disciplinary action by the Division.

6.1.11.1. A principal broker and licensees acting on his behalf who represent a seller shall have a written agency agreement with the seller defining the scope of the agency.

6.1.11.2. A principal broker and licensees acting on his behalf who represent a buyer shall have a written buyer agency agreement with the buyer defining the scope of the agency.

6.1.11.3. A principal broker and licensees acting on his behalf who represent both buyer and seller shall have written agency agreements with both buyer and seller which define the scope of the limited agency and which demonstrate that the principal broker has obtained the informed consent of both buyer and seller to the limited agency as set forth in Section R162-6.2.15.3.1.

6.1.11.3.1. A licensee may not act or attempt to act as a limited agent in any transaction in which: a) the licensee is a principal in the transaction; or b) any entity in which the licensee is an officer, director, partner, member, employee, or stockholder is a principal in the transaction.

6.1.11.4. A licensee affiliated with a brokerage other than the listing brokerage who wishes to act as a sub-agent for the seller, shall, prior to showing the seller's property:

(a) obtain permission from the principal broker with whom he is affiliated to act as a sub-agent;

(b) notify the listing brokerage that sub-agency is requested;

(c) enter into a written agreement with the listing brokerage consenting to the sub-agency and defining the scope of the agency; and

(d) obtain from the listing brokerage all information about the property which the listing brokerage has obtained.

6.1.11.5. A principal broker and licensees acting on his behalf who act as a property manager shall have a written property management agreement with the owner of the property defining the scope of the agency.

6.1.11.6. A principal broker and licensees acting on his behalf who represent a tenant shall have a written agreement with the tenant defining the scope of the agency.

6.1.12. Signing without legal authority. A licensee shall not sign or initial any document for a principal unless the licensee has prior written authorization in the form of a duly executed power of attorney from the principal authorizing the licensee to sign or initial documents for the principal. A copy of the power of attorney shall be attached to all documents signed or initialed for the principal by the licensee.

6.1.12.1. When signing a document for a principal, the licensee shall sign as follows: "(Principal's Name) by (Licensee's Name), Attorney-in-Fact."

6.1.12.2. When initialing a document for a principal, the licensee shall initial as follows: "(Principal's Initials) by (Licensee's Name), Attorney-in-Fact for (Principal's Name)."

6.1.13. Counteroffers. A licensee shall not make a counteroffer by making changes, whiting out, or otherwise altering the provisions of the Real Estate Purchase Contract or the language that has been filled in on the blanks of the Real Estate Purchase Contract. All counteroffers to a Real Estate Purchase Contract shall be made using the State-Approved Addendum form.

KEY: real estate business

Date of Enactment or Last Substantive Amendment: [~~October 19, 2006~~2007]

Notice of Continuation: June 7, 2002

Authorizing, and Implemented or Interpreted Law: 61-2-5.5

◆ ————— ◆

Commerce, Real Estate

R162-7-2

Notice of Complaint

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 29740
FILED: 03/27/2007, 08:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The notices that the Division of Real Estate sends to licensees in connection with investigations are not always called a "Notice of Complaint." Sometimes they are called a "Notice of Inquiry" or by some other name. It is therefore necessary to change the rule to correspond with current practice.

SUMMARY OF THE RULE OR CHANGE: The rule is changed so that it refers to generic notices without specifying the name of the notice, and is changed so that the required response to the notice need not be in writing if the Division specifies a different method of response.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2-5.5(1)(a)(viii)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None--A change in the name that the Division uses on notices that it sends to licensees who are under investigation has no impact on the state budget. It is not anticipated that liberalizing the rule to allow for a nonwritten response will cost or save the Division of Real Estate, and therefore, the State budget, any money.

❖ **LOCAL GOVERNMENTS:** None--A change in the name that the Division uses on notices that it sends to licensees who are under investigation, and the required method of response to those notices has no impact on local governments since local governments are not licensed real estate agents or brokers.

❖ **OTHER PERSONS:** The only other persons who are affected by this rule change are licensed real estate agents and brokers who are under investigation by the Division. This rule change would not cost them any money since they are already required to respond to an investigation by the Division of a complaint filed against them. The rule change may save these persons a small amount of funds since there would be flexibility in the method of their response to the Division. The response would not always have to be in writing, but could be an oral response in some instances if specified by the Division.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only persons affected by this rule change would be real estate brokers and sales agents who are subject to investigation by the Division. It would not cost these persons any money if there is more flexibility in the manner of the Division's inquiry into complaints, and may actually save them money since a written response would not necessarily be required by the Division in any particular inquiry.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There appears to be no fiscal impact to businesses beyond the cost savings discussed in the rule filing. Francine A. Gian, 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 801-366-0145, by FAX at 801-366-0315, or by Internet E-mail at swismer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2007

AUTHORIZED BY: Derek Miller, Director

R162. Commerce, Real Estate.

R162-7. Enforcement.

R162-7-2. Notice ~~of~~or Complaint.

7.2. When the Division notifies a licensee of a complaint against ~~him~~the licensee, or when the Division notifies a licensee that it needs information from the licensee, the licensee must respond to the ~~complaint~~notice in the manner specified in the notice within ten business days after receipt of the notice from the Division. Failure to respond to ~~the~~a notice ~~of~~or complaint or to any subsequent requests for information from the Division within the required time period will be considered an additional violation of these rules and separate grounds for disciplinary action against the licensee.

KEY: real estate business

Date of Enactment or Last Substantive Amendment: ~~February 18, 2004~~2007

Notice of Continuation: June 3, 2002

Authorizing, and Implemented or Interpreted Law: 61-2-5.5



Commerce, Real Estate
R162-8
Prelicensing Education

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29719

FILED: 03/22/2007, 11:47

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to simplify and streamline the process for certification of real estate prelicensing education schools, courses, and providers.

SUMMARY OF THE RULE OR CHANGE: The existing rule is completely rewritten to streamline and simplify the process of getting real estate prelicensing education schools, courses, and providers certified by the Division of Real Estate.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 61-2-5.5(1)(a)(ii) and (iv)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** It is anticipated that the process that the Division of Real Estate will follow in certifying real estate prelicensing education schools, courses, and providers will be less time-consuming and therefore, there will be a savings to the Division of Real Estate. The amount of anticipated savings cannot be estimated, however.

❖ **LOCAL GOVERNMENTS:** None--Local governments do not act as providers of real estate prelicensing education and therefore, these rule changes neither cost nor save local governments any money.

❖ **OTHER PERSONS:** The only persons who are affected by the rules for certification of real estate prelicensing education are the providers of that education. Since the process for certification of the education will be simplified, it is anticipated that it will save these persons time, and therefore, money. However, the amount of savings cannot be calculated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only persons affected by these rules are providers of real estate prelicensing education. These rule changes will not cost them any money, and should actually result in a savings to them.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated by this rule filing other than a possible cost-savings to prelicensing education providers as indicated in the rule summary. Francine Gian, 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 801-366-0145, by FAX at 801-366-0315, or by Internet E-mail at swismer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 4/18/2007 at 9:30 AM, Heber Wells Bldg, 160 E 300 S, Room 210, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2007

AUTHORIZED BY: Derek Miller, Director

R162. Commerce, Real Estate.

R162-8. Prelicensing Education.

~~R162-8-1. Definitions.~~

~~8.1.1 For the purposes of this rule, "school" includes:~~

~~8.1.1.1 Any college or university accredited by a regional accrediting agency which is recognized by the United States Department of Education;~~

~~8.1.1.2 Any community college, vocational-technical school, state or federal agency or commission;~~

~~8.1.1.3 Any nationally recognized real estate organization, any Utah real estate organization, or any local real estate organization which has been approved by the Real Estate Commission;~~

~~8.1.1.4 Any proprietary real estate school.~~

~~8.1.2 For the purposes of this rule, "applicant" shall include school directors, school owners and pending instructors.~~ **R162-8-1. School Application for Certification.**

8.1 Prelicensure education credit shall be given to students only for courses provided by schools that are certified by the Division at the time the courses are taught. Applicants shall apply for school certification by submitting all forms and fees required by the Division not less than 90 days prior to a course being taught. Applications shall include at minimum the following information which will be used in determining approval:

8.1.1 Name, phone number and address of the school, the school director, and all owners of the school;

8.1.1.1 The school director shall obtain approval of the school name from the Division prior to registering that name with the Division of Corporations and Commercial Code in the Department of Commerce as a real estate education provider.

8.1.2 A description of the type of school and a description of the school's physical facilities;

8.1.2.1 Except for distance education courses, all courses must be taught in an appropriate classroom facility and not in any private residence.

8.1.3 A comprehensive course outline including a description of the course, the length of time to be spent on each subject area broken into class periods, and a minimum of three to five learning objectives for every three hours of class time;

8.1.3.1 All courses of study shall meet the minimum standards set forth in the State of Utah Standard Course Outline provided for each approved course. The school may alter the sequence of presentation of the required topics.

8.1.3.2 The school director shall certify that all courses of study will meet the minimum hourly requirement of that course.

8.1.3.3 The school director shall certify that the school will not give a student credit for more than eight credit hours per day.

8.1.4 The name and certification number of each certified instructor and/or the name and resume documenting the knowledge and expertise of each guest lecturer who will teach the course;

8.1.4.1 A college or university may use any faculty member to teach an approved course provided the instructor demonstrates to the satisfaction of the Division academic training or experience qualifying him to teach the course.

8.1.5 An identification of whether the method of instruction will be traditional education or distance education;

8.1.6. A school seeking certification of distance education prelicensing courses shall:

8.1.6.1 submit to the Division a complete description of all course delivery methods and all media to be used;

8.1.6.2 provide course access to the Division using the same delivery methods and media that will be provided to the students;

8.1.6.3 describe specific and regularly scheduled interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives;

8.1.6.4 describe how the students' achievement of the stated learning objectives will be measured at regular intervals;

8.1.6.5 describe how and when prelicensure instructors will be available to answer student questions;

8.1.6.6 provide an attestation from the school director of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.

8.1.7 A copy of at least two final examinations of the course and the answer keys which are used to determine if the student has passed the exam, accompanied by an explanation of procedure if the student fails the final examination and thereby fails the course.

8.1.7.1 A maximum of 10% of the required class time may be spent in testing, including practice tests and the final examination. A student cannot challenge a course or any part of a course of study in lieu of attendance or active participation.

8.1.8 A list of the titles, authors and publishers of all required textbooks;

8.1.8.1 All texts, workbooks, supplements, and any other materials must be appropriate and current in their application to the required course outline.

8.1.9 Days, times and locations of classes;

8.1.9.1 A college or a university may schedule its courses within the criteria of its regular schedule, for example, quarter, semester, or other. A college quarter hour credit is the equivalent of 10 classroom hours, and a college semester hour credit is the equivalent of 15 classroom hours.

8.1.10 A copy of the statement which shall be provided for each student outlining the days, times and locations of classes; the number of quizzes and examinations; the grading system, including methods of testing and standards of grading; the requirements for attendance; the school's evidence of notification to candidates of the qualifying questionnaire; and the school's refund policy;

8.1.11 A copy of the statement which shall be provided to each student in capital letters no smaller than 1/4 inch containing the following language: "A student attending the (school name) is under no obligation to affiliate with any of the real estate brokerages that may be soliciting for agents at this school;" and

8.1.12 Any other information as the Division may require.

R162-8-2. Determining Fitness for School Certification.

8.2 The Division, with the concurrence of the Commission, shall certify schools based on the honesty, integrity, truthfulness, reputation and competency of the school director and school owners. ~~In order to be certified as a real estate school, the school directors and owners of the school must have integrity and be honest, truthful, reputable and competent. The determination of whether an applicant possesses these qualifications will be made by the Division, with the concurrence of the Commission.~~

~~8.2.1 In determining fitness for certification, the Division and Commission will consider information which shall include the following:~~

~~(a) whether the applicant has had a license to practice in the real estate profession, or any other regulated profession or occupation, denied, restricted, suspended, or revoked or subjected to any other disciplinary action by this or another jurisdiction;~~

~~(b) whether the applicant has been permitted to resign or surrender a real estate license or any other professional license or has ever allowed a license to expire while the applicant was under investigation by, or while action was pending against the applicant by a real estate licensing or any other regulatory agency;~~

~~(c) whether any action is pending against the applicant by any real estate licensing or other regulatory agency;~~

~~(d) whether the applicant is currently under investigation for, or charged with, or has ever been convicted of or pled guilty or no contest to, or entered a plea in abeyance to, a misdemeanor or felony.~~

— (e) whether the applicant has ever been placed on probation or ordered to pay a fine or restitution in connection with any criminal offense or a licensing action;

— (f) whether a civil judgment has ever been entered against the applicant based on fraud, misrepresentation or deceit, and whether the judgment has been fully satisfied;

— (g) whether restitution ordered by a court in a criminal conviction has been fully satisfied;

— (h) whether the probation in a criminal conviction or a licensing action has been completed and fully served; and

— (i) whether there has been subsequent good conduct on the part of the applicant. If, because of lapse of time and subsequent good conduct and reputation or other reason deemed sufficient, it shall appear to the Commission and the Division that the interest of the public will not likely be in danger by the granting of a certification, the Commission and the Division may approve the applicant relating to honesty, integrity, truthfulness, reputation and competency.]

[R162-8-3. School Application for Certification.

— 8.3 A school offering prelicensing education must be certified by the Division of Real Estate before providing any education. Each school requesting approval of an educational program designed to meet the prelicensing education requirements must make application for approval on the form prescribed by the Division. The application must include the application fee, as authorized by Section 61-2-9(5)(d), and the following information which will be used in determining the school's eligibility for approval:

— 8.3.1 Name, phone number and address of the school, school director, and all owners of the school;

— 8.3.1.1 A real estate school shall obtain approval of the name under which it intends to provide prelicensing education prior to registering that name with the Division of Corporations of the Department of Commerce as a real estate education provider.

— 8.3.2 A description of the type of school and a description of the school's physical facilities;

— 8.3.2.1 All courses must be taught in an appropriate classroom facility and not in any private residence, except for courses approved for specific home study purposes.

— 8.3.3 A comprehensive course outline including a description of the course, the length of time to be spent on each subject area broken into class periods, and a minimum of three to five learning objectives for every three hours of classroom time, and applicable application fee;

— 8.3.3.1 All courses of study will meet the minimum standards set forth in the State of Utah Standard Course Outline provided for each approved course. The school may alter the sequence of presentation of the required topics.

— 8.3.3.2 All courses of study will meet the minimum hourly requirement of that course. A credit hour is defined as 50 minutes of supervised contact by a certified instructor within a 60 minute time period. A 10 minute break will be given for each 50 minutes in class. Education credit will be limited to a maximum of eight credit hours per day. The limitation applies only to the credit a student may receive and is not intended to limit the number of classroom hours offered.

— 8.3.4 A list of each certified instructor and adjunct instructor the school intends to use and the instructor certification number which has been issued by the Division;

— 8.3.4.1 A college or university may use any faculty member to teach an approved course provided the instructor demonstrates to the satisfaction of the Division academic training or experience qualifying him to teach the course.

— 8.3.4.2 The school shall submit the name of any guest lecturer and a resume which defines the knowledge and expertise of the guest. Names shall be submitted prior to the guest being used by the school.

— 8.3.5 An itemization of methods of instruction, including lecture method, slide presentation, cassette, videotape, movie, or other method.

— Absent special approval from the Division:

— 8.3.5.1 Non lecture methods of instruction will be limited to a total of 50% of the allotted credit hours.

— 8.3.5.2 Non lecture methods of instruction will have an accompanying workbook for the student to complete during the viewing time. The schools shall submit copies of the workbooks to the Division.

— 8.3.5.3 Non lecture methods of instruction will have a certified instructor available to answer questions within at least 24 hours after the presentation.

— 8.3.6 A copy of at least two final examinations of the course and the answer keys which are used to determine if the student has passed the exam, accompanied by an explanation of what the procedure is if the student fails the final examination and thereby fails the course.

— 8.3.6.1 A maximum of 10% of the required class time may be spent in testing, including practice tests and the final examination. A student cannot challenge a course or any part of a course of study in lieu of attendance.

— 8.3.7 A list of the titles, authors and publishers of all required textbooks;

— 8.3.7.1 All texts, workbooks, supplement pamphlets and any other materials must be appropriate and current in their application to the required course outline.

— 8.3.8 Days, times and locations of classes;

— 8.3.8.1 A college or a university may schedule its courses within the criteria of its regular schedule, for example, quarter, semester, or other. A college quarter hour credit is the equivalent of 10 classroom hours, and a college semester hour credit is the equivalent of 15 classroom hours.

— 8.3.9 A copy of the statement which shall be provided for each student outlining the days, times and locations of classes; the number of quizzes and examinations; the grading system, including methods of testing and standards of grading; the requirements for attendance; the school's evidence of notification to candidates of the qualifying questionnaire; and the school's refund policy.

— 8.3.9.1 The statement to the student shall state in capital letters no smaller than 1/4 inch the following language: "Any student attending the (school name) is under no obligation to affiliate with any of the real estate brokerages that may be soliciting for agents at this school."

— 8.3.10 Any other information as the Division may require.

[R162-8-4]3. School Certification and Renewal.

8.[4]3 [When a school has met all conditions of certification, and upon approval by the Division, a school will be issued certification. Until January 1, 2005, all certifications will be issued by the calendar year and will expire on December 31. Beginning on January 1, 2005, school certifications will be issued for a two year period and will expire twenty four months from the date of issuance. School certifications may be renewed by submitting a properly completed application for renewal prior to the expiration of the school's current certification, using the form required by the Division. Until January 1, 2005, the term of a renewed school certification shall be one calendar year. Beginning on January 1, 2005, the term of a renewed school certification shall be twenty four months. Conditions of certification include the following:]The term of a school certification is twenty-four months. A certification may be renewed by submitting all forms and

fees required by the Division prior to the expiration date of the current certification. School certifications not properly renewed shall expire on the expiration date.

8.3.1 A certification may be reinstated for a period of thirty days after expiration by complying with all requirements for a timely renewal and paying a non-refundable late fee.

8.3.2 A certification may be reinstated after thirty days and within six months after expiration by complying with all requirements for a timely renewal and payment of a non-refundable reinstatement fee.

8.3.3 A certification that has been expired for more than six months may not be reinstated and an applicant must apply for a new certification following the same procedure as an original certification.

R162-8.4. School Conduct and Standards of Practice.

8.4.1 In order to maintain good standing and renew a certification, a course sponsor shall:

8.4.1.1 ~~[A school shall]~~ teach the approved course of study as outlined in the State Approved Course Outline[-];

8.4.1.2 ~~[A school shall]~~ require each student to attend the required number of hours and pass a final examination[-];

8.4.1.3 ~~[A school shall]~~ maintain a record of each student's attendance for a minimum of ~~[five]~~three years after enrollment[-];

8.4.1.3~~4~~ ~~[A school shall]~~ not accept a student for a reduced number of hours without first having a written statement from the Division which defines the exact number of hours the student needs[-];

8.4.1.4~~5~~ ~~[A school shall]~~ not make any misrepresentation in its advertising about any course of instruction, and shall be able to provide substantiation of any claims made. All advertising and public notices shall be free of statements or implications which do not enhance the dignity and integrity of the real estate profession. A school shall not make disparaging remarks about a competitor's services or methods of operation[-];

8.4.1.5~~6~~ ~~[A school shall]~~ limit approved guest lecturers who are experts in related fields to a total of 20% of the instructional hours per approved course. A guest lecturer shall provide evidence of professional qualifications to the Division prior to being used as a guest lecturer[-];

8.4.1.6~~7~~ ~~[W]~~ within 15 calendar days after the occurrence of any material change in the school which would affect its approval, the school shall give the Division written notice of that change[-];

8.4.1.7~~8~~ ~~[A school shall]~~ not attempt by any means to obtain or use the questions on the preclicensing examinations unless the questions have been dropped from the current exam bank[-];

8.4.1.8~~9~~ ~~[A school shall]~~ not give any valuable consideration to a real estate brokerage for having referred students to the school. A school shall not accept valuable consideration from a brokerage for having referred students to the brokerage[-];

8.4.1.8~~9~~.1 If the school agrees, real estate brokerages may be allowed to solicit for agents at the school. No solicitation may be made during the class time nor during the student break time. Solicitation may be made only after the regularly scheduled class so that no student will be obligated to stay for the solicitation[-];

8.4.1.9~~10~~[-] ~~[A school shall]~~ use only certified instructors or guest lecturers who have been registered with the Division[-];

~~[8.4.10 A school's owners and director shall be solely responsible for the quality of instruction in the school and for adherence to the state laws and regulations regarding school and instructor certification.~~

8.4.10.1 A school director shall8.4.1.11 provide the instructor with the approved content outline for each course and shall assure the content has been taught[-];

8.4.1.12 provide a course completion certificate in the form approved by the Division to each student upon the student's completion of the preclicensing course;

8.4.1.13 furnish to the Division a current roster of the school's approved instructors and guest lecturers. A school shall provide an updated roster to the Division each time there is a change in school instructors or guest lecturers;

8.4.1.14 give no more than eight credit hours per day to any student;

8.4.1.15 provide a written disclosure to any prospective student, prior to accepting payment for a preclicensing course, stating that: a) a student with a criminal history may possibly not qualify for a license; b) an applicant with a criminal history may be required to appear at a hearing before the Utah Real Estate Commission and the Director of the Division of Real Estate to seek approval to license; and there is no guarantee that such an applicant will be approved; and c) all applicants for a sales agent license will be required to submit to the Division with their applications fingerprint cards that will be used in the criminal background check;

8.4.1.15.1 The school shall be required to obtain the student's signature on the written disclosure required by Section 8.4.1.15 acknowledging receipt of the disclosure. The disclosure form and acknowledgement shall be retained in the school's records and made available for inspection by the Division for a minimum of three years following the date upon which the student completed the preclicensing course; and

8.4.2 A school's owners and directors shall be responsible for the quality of instruction in the school and for adherence to the state statutes and administrative rules regarding school and instructor certification.

R162-8.5. Instructor Application for Certification.

8.5 An instructor shall not teach a preclicensing course without having been certified by the Division prior to teaching.

Applicants shall apply for instructor certification by submitting all forms and fees required by the Division not less than 30 days prior to the course being taught. Applications shall include at minimum the following information which will be used in determining approval:

8.5.1 Name and certification number of the certified preclicensing school for which the applicant will work;

8.5.2 Evidence of a minimum educational level of graduation from high school or its equivalent;

8.5.3 Evidence of any combination of at least five years of full time experience and/or college-level education related to the course subject;

8.5.4 Evidence of a minimum of twelve months of fulltime teaching experience or an equivalent number of months of part time teaching experience, or attendance at Division Instructor Development Workshops totaling at least two days in length; and

8.5.5 Evidence of having passed an examination designed to test the knowledge of the subject matter proposed to be taught;

8.5.6 To teach the sales agent preclicensing course, evidence of being a licensed sales agent or broker;

8.5.7 To teach the broker preclicensing course, evidence of being a licensed associate broker, branch broker, or principal broker;

8.5.7.1 An applicant may qualify to teach a subcourse of the broker preclicensing course by meeting the following criteria:

(a) Brokerage Management. The instructor applicant must be a licensed real estate broker and have managed a real estate office, or hold a CRB or equivalent professional designation in real estate

brokerage management. The instructor applicant must have at least two years practical experience as an active real estate principal broker.

(b) Advanced Real Estate Law. The instructor applicant must be a licensed real estate broker or be a current member of the Utah State Bar or have graduated from an American Bar Association accredited law school and have at least two years real estate law experience.

(c) Advanced Appraisal. The instructor applicant must be a licensed real estate broker, or be a state-licensed or state-certified appraiser.

(d) Advanced Finance. The instructor applicant must be a licensed real estate broker or have been associated with a lending institution as a loan officer or have a degree in finance. The instructor applicant must have at least two years practical experience in real estate finance.

(e) Advanced Property Management. The instructor applicant must be a real estate licensee. The instructor applicant must have at least two years property management experience or hold a CPM or equivalent professional designation. The instructor applicant must have at least two years full-time experience as a property manager.

8.5.8 A signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the Division or its representative;

8.5.9 A signed statement agreeing not to market personal sales product; and

8.5.10 Any other information as the Division may require.

R162-8-[5]6. Determining Fitness for Instructor Certification.

8.6 The Division, with the concurrence of the Commission, shall certify instructors based on the applicant's honesty, integrity, truthfulness, reputation, and competency. [8.5. In order to be certified as a real estate instructor, the instructor applicant must have integrity and be honest, truthful, reputable and competent. The determination of whether an applicant possesses these qualifications will be made by the Division, with the concurrence of the Commission.

8.5.1. In determining fitness for certification, the Division and Commission will consider information which shall include the following:

(a) whether the applicant has had a license to practice in the real estate profession, or any other regulated profession or occupation, denied, restricted, suspended, or revoked or subjected to any other disciplinary action by this or another jurisdiction;

(b) whether the applicant has been permitted to resign or surrender a real estate license or any other professional license or has ever allowed a license to expire while the applicant was under investigation by, or while action was pending against the applicant by a real estate licensing or any other regulatory agency;

(c) whether any action is pending against the applicant by any real estate licensing or other regulatory agency;

(d) whether the applicant is currently under investigation for, or charged with, or has ever been convicted of or pled guilty or no contest to, or entered a plea in abeyance to, a misdemeanor or felony;

(e) whether the applicant has ever been placed on probation or ordered to pay a fine or restitution in connection with any criminal offense or a licensing action;

(f) whether a civil judgment has ever been entered against the applicant based on fraud, misrepresentation or deceit and whether the judgment has been fully satisfied;

(g) whether restitution ordered by a court in a criminal conviction has been fully satisfied;

(h) whether the probation in a criminal conviction or a licensing action has been complete and fully served; and

(i) whether there has been subsequent good conduct on the part of the applicant. If, because of lapse of time and subsequent good conduct and reputation or other reason deemed sufficient, it shall appear to the Commission and the Division that the interest of the public will not likely be in danger by the granting of a certification, the Commission and the Division may approve the applicant relating to honesty, integrity, truthfulness, reputation and competency.]

[R162-8-6. Instructor Application for Certification.

8.6 An instructor shall not teach a prelicensing course by himself without having been certified by the Division prior to teaching. Each instructor and each adjunct instructor requesting approval to be certified to teach the education requirements of real estate licensing must make application for approval on a form prescribed by the Division.

8.6.1 The instructor and the adjunct instructor applicant will demonstrate the initial ability to teach by either meeting the minimum point requirement outlined on the application form or by receiving a conditional approval granted by the division. The application form shall be received by the Division before the instructor applicant can begin to teach in the classroom.

8.6.1.1 In the event an instructor candidate fails to meet the minimum point requirement outlined on the application form, and upon written recommendation from the certified school, the division may issue a conditional approval for the candidate to proceed into the instructor apprentice program.

8.6.1.2 The applicant receiving a conditional approval from the division will complete the apprentice teaching as outlined in 8.6.2.2 and 8.6.2.3 or as outlined in 8.6.4.1 and 8.6.4.2, and will be audited during the apprentice teaching by the education director of the division using the same evaluation form being used by the students.

8.6.1.3 The applicant receiving a conditional approval will need to receive the same satisfactory recommendation as outlined in 8.6.2.4 or 8.6.4.3 in addition to approval from the education director of the division before becoming certified.

8.6.2 The instructor applicant for the 90-hour sales agent prelicensing course will complete an instructor apprentice program, the requirements of which are the following:

8.6.2.1 The instructor applicant will either audit each course to be taught by him and prepare teaching notes on the course of study; or

8.6.2.2 The instructor applicant will co-teach the course with a fully certified instructor; and thereafter

8.6.2.3 The instructor applicant will teach the course under the direction of a fully certified instructor. The instructor will teach the curriculum as provided by the school.

8.6.2.4 The school will provide to the division evidence of a satisfactory recommendation made by the certified instructor and the school director. The school will also provide to the division satisfactory evaluations of the apprentice instructor made by the students attending the class the instructor taught as an apprentice. The evaluations will be graded on a 5-point scale, and the apprentice instructor must have received a minimum of a 3.5-point average on the evaluations.

8.6.2.5 The instructor applicant shall pass an examination designed to test the knowledge of the subject matter proposed to be taught.

8.6.2.6 This instructor, once certified, shall have the authority to teach all segments of the sales agent curriculum and any classes certified for continuing education regarding real estate principles and practices.

—8.6.3 The instructor applicant for a broker prelicensing subcourse will be a principal broker, an associate broker or a branch broker and will meet the following criteria:

—8.6.3.1 Brokerage Management. The instructor applicant must be a licensed broker and have managed a real estate office, or hold a CRB or equivalent designation in real estate brokerage management. The instructor applicant must have at least two years practical experience as an active real estate principal broker.

—8.6.3.2 Advanced Real Estate Law. The instructor applicant must be a current member of the Utah Bar Association or have graduated from an American Bar Association law school. The instructor applicant must have at least two years practical experience in the field of real estate law.

—8.6.3.3 Advanced Appraisal. The instructor applicant must be a state certified appraiser and hold a MAI or equivalent designation. The instructor applicant must have at least two years practical experience in appraising.

—8.6.3.4 Advanced Finance. The instructor applicant must have been associated with a lending institution as a loan officer or have a degree in finance. The instructor applicant must have at least two years practical experience in real estate finance.

—8.6.3.5 Advanced Property Management. The instructor applicant must be a real estate licensee. The instructor applicant must hold a CPM or equivalent designation. The instructor applicant must have at least two years full-time experience as a property manager.

—8.6.3.6 Equivalent Qualifications. The instructor applicant must have other experience, education, or credentials which are equivalent to any of the above as determined by the Division and the Commission.

—8.6.4 The adjunct instructor applicant may be certified to teach a portion of the sales agent prelicensing course or a portion of a broker subcourse with certification limited to teaching a specific subject. The applicant will complete an instructor apprentice program, the requirements of which are the following:

—8.6.4.1. The instructor applicant will either audit each course to be taught by him and prepare teaching notes on the course of study; or

—8.6.4.2 The instructor applicant will co-teach the specific subject with a fully certified instructor; and thereafter

—8.6.4.3 The instructor applicant will teach the specific subject under the direction of a fully certified instructor. The instructor will teach the curriculum as provided by the school.

—8.6.4.4 The school will provide to the division evidence of a satisfactory recommendation made by the certified instructor and the school director. The school will also provide to the division satisfactory evaluations of the apprentice instructor made by the students attending the class the instructor taught as an apprentice. The evaluations will be graded on a 5-point scale, and the apprentice instructor must have received a minimum of a 3.5 point average on the evaluations.

]R162-8-7. Instructor Certification Renewal.

[8.7 Upon approval by the Division, an instructor applicant will be issued certification. All original instructor certifications expire twenty-four months after issuance.

—8.7.1 Instructor certifications may be renewed by submitting a properly completed application for renewal prior to the expiration date of the instructor's current certification, using the form required by the Division. Renewed instructor certifications will be issued for a twenty-four month period. Conditions of renewal of certification include providing proof of the following:

—8.7.1.1 Must have taught at least 20 hours of in-class instruction in a certified real estate course during the preceding two years;

—8.7.1.2 Must have attended a real estate instructor development workshop sponsored by the Division during the preceding two years; and

—8.7.1.3 Must have completed 12 hours of live education taken in a real estate related subject in addition to the 12 hours of continuing education required for license renewal, and will provide a written evaluation of the course(s) and instructor(s) to the Division at time of renewal on a specific instructor evaluation form provided by the Division.

—8.7.2 If the instructor does not submit a properly completed renewal form, the renewal fee, and any required documentation prior to the expiration date of the instructor's current certification, the certification shall expire.

—8.7.2.1 When a certification expires, the certification may be reinstated for a period of thirty days after the expiration date upon payment of a non-refundable late fee in addition to the requirements of Section R162-8.7.1.1 through R162-8.7.1.3.

—8.7.2.2 After this thirty day period, and until three months after the expiration date, an instructor certification may be reinstated upon payment of a non-refundable fee and completion of 6 classroom hours of education related to real estate or teaching techniques in addition to the requirement of Sections R162-8.7.1.1 through R162-8.7.1.3.

—8.7.2.3 After the three month period, those instructors and adjunct instructors not meeting the conditions for renewal of certification must apply as an original applicant. 8.7 The term of a prelicensing education instructor certification is twenty-four months. A certification may be renewed by submitting all forms and fees required by the Division prior to the certification's expiration date.

8.7.1 Certifications not properly renewed shall expire on the expiration date.

8.7.1.1 A certification may be reinstated for a period of thirty days after expiration by complying with all requirements for a timely renewal and paying a non-refundable late fee.

8.7.1.2 A certification may be reinstated after thirty days and within six months after expiration by complying with all requirements for a timely renewal and payment of a non-refundable reinstatement fee.

8.7.1.3 A certification that has been expired for more than six months may not be reinstated and an applicant must apply for a new certification following the same procedure as an original certification.

8.7.2 To renew an instructor certification an instructor shall, during the two years prior to renewal:

8.7.2.1 teach at least 20 hours of in-class instruction in a certified real estate course; and

8.7.2.2 attend an instructor development workshop sponsored by the Division.

]R162-8-8. Administrative Proceedings.

—8.8 The Division may deny certification or renewal of certification to any school or instructor that does not meet the standards required by this chapter in accordance with Section R162-10 of these rules.

R162-8-9. Disclosure Requirements.

—8.9 Criminal History. For the purposes of this rule, criminal history is defined as any felony or misdemeanor convictions, any pleas in abeyance or diversion agreements, or any pending any criminal charges.

—8.9.1 Prior to accepting payment from a prospective student for a pre-licensing education course, a certified school shall provide a written disclosure to the prospective student stating that: a) a student with a

criminal history may possibly not qualify for a license; b) an applicant with a criminal history may be required to appear at a hearing before the Utah Real Estate Commission and the Director of the Division of Real Estate to seek approval to license, and there is no guarantee that such an applicant will be approved; and c) all applicants for a sales agent license will be required to submit to the division with their applications fingerprint cards that will be used in criminal background checks.

8.9.2 The school shall be required to obtain the student's signature on the written disclosure required by Section 8.9 acknowledging receipt of the disclosure. The disclosure form and acknowledgement shall be retained in the school's records and made available for inspection by the division for a minimum of two years following the date upon which the student completes the pre-licensing course.

KEY: real estate business

Date of Enactment or Last Substantive Amendment: ~~October 19, 2006~~ 2007

Notice of Continuation: June 3, 2002

Authorizing, and Implemented or Interpreted Law: 61-2-5.5



Commerce, Real Estate **R162-9** Continuing Education

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29718

FILED: 03/22/2007, 11:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to simplify and streamline the process for certification of real estate continuing education courses and instructors.

SUMMARY OF THE RULE OR CHANGE: The existing rule is completely rewritten to streamline and simplify the process of obtaining certification from the Division of Real Estate of real estate continuing education courses and course instructors.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 61-2-5.5(1)(a)(ii) and (iv)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** It is anticipated that the process that the Division of Real Estate will follow in certifying real estate continuing education courses and providers will be less time-consuming and therefore, there will be a savings to the Division of Real Estate. The amount of savings cannot be estimated, however.

❖ **LOCAL GOVERNMENTS:** None--Local governments do not act as providers of real estate continuing education and therefore this rule change will neither cost nor save local governments any money.

❖ **OTHER PERSONS:** The only persons who are affected by the rule for certification of real estate continuing education courses and instructors are the providers of that education. Since the process for obtaining certification of that education will be simplified, it is anticipated that it will save these persons time, and therefore, money. However, the amount of savings cannot be calculated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only persons affected by this rule change are the providers of real estate continuing education. This rule change should not cost them any money, and should actually result in a savings to them.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated by this rule filing other than a possible cost-savings to continuing education providers as indicated in the rule summary. Francine A. Giani, 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 801-366-0145, by FAX at 801-366-0315, or by Internet E-mail at swismer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 4/18/2007 at 9:30 AM, Heber Wells Bldg, 160 E 300 S, Room 210, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2007

AUTHORIZED BY: Derek Miller, Director

R162. Commerce, Real Estate.

R162-9. Continuing Education.

[R162-9-1. Objective and Specific Hour Requirements.

~~9.1.1 Objective. Through education, the licensee shall be reasonably current in real estate knowledge and shall have improved ability to provide greater protection and service to the real estate consumer, thereby meeting the Real Estate Commission's primary objective of protection of and service to the public.~~

~~9.1.2 Specific Hour Requirements. A minimum of three of the 12 hours of continuing education required by Section 61-2-9(2)(a) must be taken in a "core" course, the subject of which will be designated by the Division to keep a licensee current in changing practices and laws.~~

— 9.1.2.1 Definitions.

— 9.1.2.1.1 For the purposes of this rule, "live" continuing education is defined as: a) live, in-class instruction; b) videotapes, computer courses, or other education in which the instructor and the student are separated by distance and sometimes by time, so long as the education takes place in a school or industry association office with a Division-certified precertified instructor present to answer questions; or c) ARELLO-certified courses or other courses that have received Distance Education Certification from the Division as provided in Subsection 9.5.3 of these rules.

— 9.1.2.1.2 For the purposes of this rule and except for courses that have received Distance Education Certification from the Division as provided in Subsection 9.5.3 of these rules, "passive" continuing education is defined as videotapes, computer courses, or other education in which the instructor and student are separated by distance and sometimes by time if viewed in a location where no Division-certified precertified instructor is present.

— 9.1.2.2 A minimum of 6 hours of the 12 hours of continuing education required to renew must be live continuing education. The balance of up to 6 hours may be passive continuing education.

R162-9.2. Education Providers.

— 9.2. Continuing education providers who provide education courses specifically tailored for, or marketed to, Utah real estate, appraiser, or mortgage licensees, and who intend that real estate licensees shall receive continuing education credit for such courses, are required to apply to the Division for course certification prior to the courses being taught to students. Except as may be provided in Subsections 9.2.4, the Division will not grant continuing education credit to students who have taken courses that have not been certified by the Division in advance of the courses being taught to students.

— 9.2.1 Approved providers may include accredited colleges and universities, public or private vocational schools, national and state real estate related professional societies and organizations, real estate boards, and proprietary schools or instructors.

— 9.2.2 Application procedure. Except as provided in Subsection 9.2.4, education providers shall make application to the Division following the procedures set for in Section 9.5.

— 9.2.3 Name approval. A real estate school shall obtain approval of the name under which it intends to provide continuing education courses prior to registering that name with the Division of Corporations of the Department of Commerce as a real estate education provider.

— 9.2.4 A real estate education provider who provides proof to the division that the provider's course offering has been certified for continuing education credit in a minimum of three other states and that the provider has specific standards in place for development of courses and approval of instructors may be granted course certification by filling out the form required by the Division and including with the application:

— (a) a copy of the provider's standards used for developing curricula and for approving instructors;

— (b) evidence that the course is certified in at least three states;

— (c) a sample of the course completion certification bearing all information required by Section 9.5.2.15; and

— (d) all required fees, which shall be nonrefundable.

— 9.2.5 Individual licensees may apply to the Division for continuing education credit for a non-certified real estate course that was not required by these rules to be certified in advance by the Division by filling out the form required by the Division and providing all information concerning the course required by the Division. If the licensee is able to demonstrate to the satisfaction of the Division that

the course will likely improve the licensee's ability to better protect or serve the public and improve the licensee's professional licensing status, the Division may grant the individual licensee continuing education credit for the course.

— 9.2.5.1 Provided the subject matter of the course taken is not exclusive to the other state or jurisdiction, a course approved for continuing education in another state or jurisdiction may be granted Utah continuing education credit on a case by case basis.

R162-9.3. Course Certification Criteria.

— 9.3 Courses submitted for certification shall have significant intellectual or practical content and shall serve to increase the professional competence of the licensee, thereby meeting the objective of the protection of and service to the public.

— 9.3.1 Three hours shall be comprised of "core course" curricula, the subjects of which will be determined by the division and the Real Estate Commission. The subject matter of these courses will be for the purpose of keeping a licensee current in changing practices and laws. These courses may be provided by the division or by private education providers but, in all cases, will have prior certification by the division.

— 9.3.1.1 Principal brokers and associate brokers may use the Division's Trust Account Seminar to satisfy the "core" course requirement once every three renewal cycles.

— 9.3.2 The remaining nine hours shall be in substantive areas dealing with the practice of real estate. Acceptable course subject matter shall include the following:

— 9.3.2.1 Real estate financing, including mortgages and other financing techniques; real estate investments; accounting and taxation as applied to real property; estate building and portfolio management; closing statements; real estate mathematics;

— 9.3.2.2 Real estate law; contract law; agency and subagency; real estate securities and syndications; regulation and management of timeshares, condominiums and cooperatives; real property exchanging; real estate legislative issues; real estate license law and administrative rules;

— 9.3.2.3 Land development; land use, planning and zoning; construction; energy conservation;

— 9.3.2.4 Property management; leasing agreements; accounting procedures; management contracts; landlord/tenant relationships;

— 9.3.2.5 Fair housing; affirmative marketing; Americans with Disabilities Act;

— 9.3.2.6 Real estate ethics.

— 9.3.2.7 Using the computer, the Internet, business calculators, and other technologies to enhance the licensee's service to the public.

— 9.3.2.8 Offerings concerning professional development, customer relations skills, or sales promotion, including salesmanship, negotiation, sales psychology, marketing techniques, servicing your clients, or similar offerings.

— 9.3.2.9 Offerings in personal and property protection for the licensee and his clients.

— 9.3.3 Non-acceptable course subject matter shall include courses similar to the following:

— 9.3.3.1 Offerings in mechanical office and business skills, such as typing, speed reading, memory improvement, language report writing, advertising, or similar offerings;

— 9.3.3.2 Offerings concerning physical well-being or personal development, such as personal motivation, stress management, time management, dress for success, or similar offerings;

— 9.3.3.3 Meetings held in conjunction with the general business of the licensee and his broker or employer, such as sales meetings, in-house staff or licensee training meetings;

—9.3.4 The determination about whether or not the subject matter of a course is acceptable for continuing education credit shall be made by the Division.

—9.3.4.1 If the Division has denied certification to a course on a finding that the subject matter is not acceptable, the course provider may request that the Commission conduct a new review of the course. All requests for a new review of a course shall be made in writing within 30 days after issuance of the Division's decision. The Commission will thereafter review the course and issue a written decision about whether or not the subject matter of the course is acceptable for continuing education credit. The decision of the Commission shall be subject to agency review by the Executive Director of the Department of Commerce.

—9.3.5 The minimum length of a course shall be one credit hour or its equivalency. A credit hour is defined as 50 minutes within a 60-minute time period.

R162-9-4. Instructor Certification Criteria.

—9.4 Instructors for continuing education purposes will be evaluated and approved separately from the continuing education courses. All instructors must apply for certification from the Division not less than 30 days prior to the anticipated date of the first class that they intend to teach.

—9.4.1 The instructor applicant must meet the same requirements as a certified prelicensing instructor as defined in R162-8-4.1; and

—9.4.2 The instructor applicant must demonstrate knowledge of the subject matter by submission of proof of the following:

—9.4.2.1 At least five years experience in a profession, trade or technical occupation in a field directly related to the course which the applicant intends to instruct; or

—9.4.2.2 A bachelors or postgraduate degree in the field of real estate, business, law, finance, or other academic area directly related to the course which applicant intends to instruct; or

—9.4.2.3 Any combination of at least five years of full-time experience and college-level education in a field directly related to the course which the applicant intends to instruct; or

—9.4.3 The instructor applicant must demonstrate evidence of the ability to communicate the subject matter by the submission of proof of the following:

—9.4.3.1 A state teaching certificate or showing successful completion of appropriate college courses in the field of education; or

—9.4.3.2 A professional teaching designation from the National Association of Realtors or the Real Estate Educators Association; or

—9.4.3.3 Evidence, such as instructor evaluation forms or letters of reference, of the ability to teach in schools, seminars, or in an equivalent setting.

—9.4.4 An original continuing education instructor certification shall expire twenty-four months after issuance. Instructor certifications may be renewed by submitting a properly completed application for renewal prior to the expiration of the instructor's current certification, using the form required by the Division. The term of a renewed instructor certification is twenty-four months.

—9.4.4.1 If the instructor does not submit a properly completed renewal prior to the expiration date of the instructor's current certification, the certification shall expire. For a period of thirty days after the expiration of an instructor certification, the instructor may apply for reinstatement of the certification by complying with all of the requirements for a timely renewal and, in addition, paying a non-refundable late fee.

—9.4.4.2 After this thirty day period, and until three months after the expiration date, an instructor certification may be reinstated upon

payment of a non-refundable late fee and completion of 6 classroom hours of education related to real estate or teaching techniques in addition to complying with all of the requirements for a timely renewal.

—9.4.4.3 After the certification has been expired for three months, an instructor may not reinstate an expired certification and must apply for a new certification following the same procedure as an original applicant for certification.

R162-9-5. Submission of Course for Certification.

—9.5 An applicant shall apply for consideration of certification of a course to the Division of Real Estate not less than 30 days prior to the anticipated date of the first class.

—9.5.1 The application shall include the non-refundable course certification fee and the non-refundable instructor certification fee per course per instructor. Both fees shall be made payable to the Division of Real Estate.

—9.5.2 The application shall be made on the form approved by the Division which shall include the following information:

—9.5.2.1 Name, phone number and address of the sponsor of the course, including owners and the coordinator or director responsible for the offering;

—9.5.2.2 The title of the course offering including a description of the type of training; for example, seminar, conference, correspondence course, or similar offering;

—9.5.2.3 A copy of the course curriculum including a course outline of the comprehensive subject matter. Except for courses approved for specific distance education delivery, the course outline shall include the length of time to be spent on each subject area broken into segments of no more than 15 minutes each, the instructor for each segment, and the teaching technique used in each segment;

—9.5.2.4 Three to five learning objectives for every three hours or its equivalency of the course and the means to be used in assessing whether the learning objectives have been reached;

—9.5.2.5 A complete description of all materials to be distributed to the participants;

—9.5.2.6 The date, time and locations of each course;

—9.5.2.7 The procedure for pre-registration, the tuition or registration fee and a copy of the cancellation and refund policy;

—9.5.2.8 Except for courses approved for specific distance education delivery, the procedure for taking and maintaining control of attendance during class time, which procedure shall be more extensive than having the student sign a class roll;

—9.5.2.9 The difficulty level of the course categorized by beginning, intermediate or advanced;

—9.5.2.10 A sample of the proposed advertising to be used, if any;

—9.5.2.11 An instructor application on a form approved by the Division including the information as defined in R162-9-4;

—9.5.2.12 A signed statement agreeing to allow the course to be randomly audited on an unannounced basis by the Division or its representative;

—9.5.2.13 A statement defining how the course will meet the objectives of continuing education by providing education of a current nature and how it will improve the licensee's ability to provide greater protection of and service to the public;

—9.5.2.14 A signed statement agreeing not to market personal sales product.

—9.5.2.15 A sample of the completion certificate, or the completion certificate required by the division, if any, that will be issued which shall bear the following information:

—(a) Space for the licensee's name, type of license and license number, date of course

—(b) The name of the course provider, course title, hours of credit, certification number, and certification expiration date;

—(c) Space for signature of the course sponsor and a space for the licensee's signature.

—9.5.2.16 Signature of the course coordinator or director.

—9.5.3 Continuing education courses in which the instruction does not take place in a traditional classroom setting, but rather through other media where teacher and student are separated by distance and sometimes by time, may be certified by the Division provided the delivery method of the course has been certified by either the Commission or the Association of Real Estate Licensing Law Officials (ARELLO).

—9.5.3.1 If a course is certified by ARELLO, only the delivery method will be certified by ARELLO. The subject matter of the course will be certified by the Division.

—9.5.3.2. Education providers making application for Distance Education Certification based on ARELLO certification shall provide appropriate documentation that the ARELLO certification is in effect and that the course meets the content requirements of R162-9.3.2 along with other applicable requirements of this rule.

—9.5.3.2.1. Approval under this paragraph will cease immediately should ARELLO certification be discontinued for any reason.

—9.5.3.3. Courses approved for distance education delivery shall justify the classroom hour equivalency as is required by ARELLO standards.

—9.5.4. The Real Estate Commission reserves the right to consider alternative certification methods and/or procedures for non-ARELLO certified Distance Education Courses.

R162-9-6. Conditions to Certification.

—9.6.1 Upon completion of the educational program the course sponsor shall provide a certificate of completion in the form required by the Division.

—9.6.1.1 Certificates of completion will be given only to those students who attend a minimum of 90% of the required class time of a live lecture. Within 10 days of the end of the course, the sponsor shall provide to the Division a roster of students and their license numbers for whom certificates were issued.

—9.6.2 A course sponsor shall maintain for three years a record of registration of each person completing an offering and any other prescribed information regarding the offering, including exam results, if any.

—9.6.2.1 Students registered for a distance education course shall complete the course within one year of the registration date.

—9.6.3 Whenever there is a material change in a certified course, for example, curriculum, course length, instructor, refund policy, the sponsor shall promptly notify the Division in writing.

—9.6.4 Until January 1, 2005, all course certifications shall be valid for one year after date of approval by the Division. Beginning January 1, 2005, all original course certifications and all renewed course certifications shall be issued with an expiration date of twenty-four months after approval by the Division.

—9.6.4.1 If a course is not renewed within three months after its expiration date, the course provider will be required to apply for a new certification for the course.

—9.6.4.2 After a course has been renewed for three times, the course provider will be required to make application as for a new certification.

—9.6.5 Renewed instructor certifications shall be issued for a term of twenty-four months.

—9.6.5.1 To renew instructor certification an instructor must teach, during the year prior to renewal, a minimum of one class in each course for which certification is sought.

—9.6.5.2 If the instructor has not taught during the year and wishes to renew certification, written explanation shall be submitted outlining the reason for not instructing the course, including documentation satisfactory to the Division as to the present level of expertise in the subject matter of the course.

R162-9-7. Course and Instructor Evaluations.

—9.7 The Division shall cause the course to be evaluated for adherence to course content and other prescribed criteria, and for the effectiveness of the instructor.

—9.7.1 At the end of each course each student shall complete a standard evaluation form provided by the Division. The forms shall be collected at the end of the class in an envelope and the course provider will mail the sealed envelope to the Division within 10 days of the last class.

—9.7.2 On a random basis the Division will assign monitors to attend a course for the purpose of evaluating the course and the instructor. The monitors will complete a standard evaluation form provided by the Division which will be returned to the Division within 10 days of the last class.

R162-9-8. Continuing Education Banking.

—9.8 For the purposes of this rule, "continuing education banking" is defined as the upload by a course provider of such information as specified by the Division to the Division's data base concerning the students who have successfully completed a continuing education course, including the name of the course, the certificate number assigned to the course by the Division, the date the course was taught, and the names and license numbers of all students who successfully completed the course.

—9.8.1 Except as provided in Subsection 9.8.2, all course providers shall bank continuing education for all students who successfully completed a course within ten days after the course was taught.

—9.8.2 If a course provider is unable to bank a student's continuing education credit because the student has either failed to furnish the name registered with the Division and/or the student's license number, or has furnished an incorrect license number or incorrect name to the course provider, the course provider shall not be disciplined by the Division for failure to bank the student's continuing education due to the reasons specified above.

—9.8.3 A student who fails to provide an accurate license number and the name registered with the Division to a course provider within 7 days of course attendance shall not receive continuing education credit for the course attended.]

R162-9-1. Course Application for Certification.

—9.1 Continuing education credit shall be given to students only for courses that are certified by the Division at the time the courses are taught. Course sponsors shall apply for course certification by submitting all forms and fees required by the Division not less than 30 days prior to the course being taught. Applications shall include at a minimum the following information which will be used in determining approval:

—9.1.1 Name and contact information of the course sponsor and the name of the entity through which the course will be provided;

—9.1.2 A description of the physical facility where the course will be taught;

9.1.2.1 Except for distance education courses, all courses must be taught in an appropriate classroom facility and not in a private residence.

9.1.3 The title of the course;

9.1.4 The proposed amount of credit hours for the course;

9.1.4.1 A credit hour is defined as 50 minutes within a 60-minute time period.

9.1.4.2 The minimum length of a course shall be one credit hour.

9.1.5 A statement defining how the course will meet the objectives of continuing education by increasing the licensee's knowledge, professionalism, and ability to protect and serve the public;

9.1.6 A course outline including, for each segment of no more than 15 minutes, a description of the subject matter;

9.1.7 A minimum of three learning objectives for every three hours of class time;

9.1.8 The name and certification number of each certified instructor who will teach the course;

9.1.9 Identification of whether the method of instruction will be traditional education or distance education;

9.1.9.1 A sponsor seeking certification of a distance education course shall:

9.1.9.1.1 submit to the Division a complete description of all course delivery methods and all media to be used;

9.1.9.1.2 provide course access to the Division using the same delivery methods and media that will be provided to the students;

9.1.9.1.3 describe specific and regularly scheduled interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives;

9.1.9.1.4 describe how and when instructors will be available to answer student questions; and

9.1.9.1.5 provide an attestation from the sponsor of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.

9.1.10 Copies of all materials to be distributed to the participants;

9.1.11 The procedure for pre-registration, the tuition or registration fee and a copy of the cancellation and refund policy;

9.1.12 Except for courses approved for distance education, the procedure for taking and maintaining control of attendance during class time, which procedure shall be more extensive than having the student sign a class roll;

9.1.13 A sample of the completion certificate which shall bear the following information:

(a) Space for the licensee's name, type of license and license number, date of course;

(b) The name of the course provider, course title, hours of credit, certification number, and certification expiration date; and

(c) Space for signature of the course sponsor and a space for the licensee's signature.

9.1.14 A signed statement agreeing not to market personal sales products;

9.1.15 A signed statement agreeing to allow the course to be randomly audited on an unannounced basis by the Division or its representative;

9.1.16 A signed statement agreeing to upload, within 10 days after the end of a course offering, to the database specified by the Division, the course name, course certificate number assigned by the Division, the date the course was taught, the number of credit hours,

and the names and license numbers of all students receiving continuing education credit; and

9.1.16.1 A course sponsor is not responsible for uploading information for students who fail to provide an accurate name or license number registered with the Division.

9.1.16.2 Continuing education credit will not be given to any student who fails to provide to a course sponsor an accurate name or license number registered with the Division within 7 days of attending the course.

9.1.17 Any other information as the Division may require.

R162-9-2. Determining Fitness for Course Certification.

9.2 The Division shall certify courses based on intellectual and practical content and whether the course increases the licensee's knowledge, professionalism and ability to protect and serve the public.

9.2.1 Courses in the following subjects may be certified as "core": state approved forms/contracts, ethics, agency, prevention of real estate and mortgage fraud, federal and state real estate laws, and brokers' trust accounts.

9.2.2 Courses in the following subjects may be certified as "elective":

9.2.2.1 Real estate financing, including mortgages and other financing techniques; real estate investments; real estate market measures and evaluation; real estate appraising; accounting and taxation as applied to real property; estate building and portfolio management for clients; settlement statements; real estate mathematics;

9.2.2.2 Real estate law; contract law; agency and subagency; real estate securities and syndications; regulation and management of timeshares, condominiums and cooperatives; resort and recreational properties; farm and ranch properties; real property exchanging; legislative issues that influence real estate practice; real estate license law and administrative rules;

9.2.2.3 Land development; land use, planning and zoning; construction; energy conservation in buildings; water rights; real estate environmental issues and hazards including lead-based paint, underground storage tanks, radon, etc., and how they affect real estate; real estate inspections;

9.2.2.4 Property management; leasing agreements; accounting procedures; management contracts; landlord/tenant relationships;

9.2.2.5 Americans with Disabilities Act; Fair housing; affirmative marketing;

9.2.2.6 Commercial real estate; Tenants-in-Common;

9.2.2.7 Using the computer, the Internet, business calculators, and other technologies to directly increase the licensee's knowledge, professionalism and ability to protect and serve the public;

9.2.2.8 Professional development, business success, customer relation skills, or sales promotion, including salesmanship, negotiation, sales psychology, marketing techniques related to real estate knowledge, servicing clients, communication skills;

9.2.2.9 Personal and property protection for licensees and their clients; and

9.2.2.10 Any other topic that directly relates to the real estate brokerage practice and directly contributes to the objective of continuing education.

9.2.3 Non-acceptable course subject matter includes topics such as:

9.2.3.1 Offerings in mechanical office and business skills, such as typing, speed reading, memory improvement, language report writing, advertising, or similar offerings;

9.2.3.2 Physical well-being, personal motivation, stress management, dress-for-success, or similar offerings;

9.2.3.3 Meetings held in conjunction with the general business of the licensee and his broker, employer or trade organization, such as sales meetings, in-house staff or licensee training meetings, or member orientation for professional organizations;

9.2.3.4 Courses in wealth creation or retirement planning for licensees; and

9.2.3.5 Courses that are specifically designed for exam preparation.

R162-9-3. Course Certification Renewal.

9.3 Course certifications are valid for a period of two years. A certification may be renewed by submitting all forms and fees required by the Division prior to the expiration date of the current certification. Certifications not properly renewed shall expire on the expiration date.

9.3.1 A certification may be reinstated for a period of thirty days after expiration by complying with all requirements for a timely renewal and paying a non-refundable late fee.

9.3.2 A certification may be reinstated after thirty days and within six months after expiration by complying with all requirements for a timely renewal and payment of a non-refundable reinstatement fee.

9.3.3 A certification that has been expired for more than six months may not be reinstated and an applicant must apply for a new certification following the same procedure as an original certification.

R162-9-4. Conduct and Standards of Practice.

9.4 In order to maintain good standing and renew a certification, a course sponsor shall:

9.4.1 Upon completion of a course offering, provide a certificate of completion, in the form required by the Division, to those students who attend a minimum of 90% of the required class time;

9.4.2 Maintain for three years a record of registration of each person completing an offering and any other prescribed information regarding the offering, including exam results, if any;

9.4.3 For distance education courses, give education credit only to students who complete the course within one year of the registration date;

9.4.4 Notify the Division in writing within 15 days of any material change in a certified course, for example, curriculum, course length, instructor, refund policy, etc.; and

9.4.5 Upon completion of a course offering, provide to each student a course evaluation, in the form required by the Division, and submit the completed course evaluations to the Division within 10 days.

R162-9-5. Instructor Application for Certification.

9.5 Continuing education credit shall be given to students only for courses that are taught by an instructor who is certified by the Division at the time the courses are taught. Applicants shall apply for instructor certification by submitting all forms and fees required by the Division not less than 30 days prior to the course being taught. Applications shall include at a minimum the following information which will be used in determining approval:

9.5.1 Name and contact information of the applicant;

9.5.2 Evidence of a minimum education level of graduation from high school or its equivalent;

9.5.3 Evidence of any combination of at least three years of full time experience and/or college-level education related to the course subject;

9.5.4 Evidence of at least twelve months of fulltime teaching experience or an equivalent number of months of part time teaching experience, or attendance at the Division's Instructor Development Workshops totaling at least two days in length;

9.5.5 A signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the Division or its representative;

9.5.6 A signed statement agreeing not to market personal sales products; and

9.5.7 Any other information as the Division may require.

R162-9-6. Determining Fitness for Instructor Certification.

9.6 The Division with the concurrence of the Commission shall certify instructors based on the applicant's honesty, integrity, truthfulness, reputation, and competency.

R162-9-7. Instructor Certification Renewal.

9.7 Instructor certifications are valid for a period of two years. A certification may be renewed by submitting all forms and fees required by the Division prior to the expiration date of the current certification.

9.7.1 Certifications not properly renewed shall expire on the expiration date.

9.7.1.1 A certification may be reinstated for a period of thirty days after expiration by complying with all requirements for a timely renewal and paying a non-refundable late fee.

9.7.1.2 A certification may be reinstated after thirty days and within six months after expiration by complying with all requirements for a timely renewal and paying a non-refundable reinstatement fee.

9.7.1.3 A certification that has been expired for more than six months may not be reinstated and an applicant must apply for a new certification following the same procedure as an original certification.

9.7.2 To renew an instructor certification an instructor must teach, during the previous renewal period, a minimum of 12 continuing education credit hours.

9.7.2.1 If the instructor has not taught a minimum of 12 hours during the previous renewal period, written explanation outlining the reason for not meeting the requirement and satisfactory documentation of the applicant's present level of expertise shall be provided to the Division.

KEY: continuing education

Date of Enactment or Last Substantive Amendment: ~~January 17,~~ 2007

Notice of Continuation: June 26, 2002

Authorizing, and Implemented or Interpreted Law: 61-2-5.5



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

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29711

FILED: 03/20/2007, 11:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to delete references to dates and provisions that are no longer needed because of the passage of time.

SUMMARY OF THE RULE OR CHANGE: The dates are deleted from Subsections R162-102-1(102.1.2.1.1), R162-102-3(102.3.1.1.4), and R162-102-5(102.5.1.2). Subsections R162-102-3(102.3.1.1.1) through R162-102-3(102.3.1.1.3) are deleted in their entirety.

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

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Deleting references to dates and provisions that are no longer needed because of the passage of time has no impact on the state budget.
- ❖ LOCAL GOVERNMENTS: None--Deleting references to dates and provisions that are no longer needed because of the passage of time has no impact on local governments.
- ❖ OTHER PERSONS: None--Deleting references to dates and provisions that are no longer needed because of the passage of time has no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There are no persons affected by the deletion of references to dates and provisions that are no longer needed because of the passage of time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated by this rule filing, which merely updates the rules to remove provisions no longer necessary because of the passage of time. Francine A. Giani, 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 801-366-0145, by FAX at 801-366-0315, or by Internet E-mail at swismer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2007

AUTHORIZED BY: Derek Miller, Director

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

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

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

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

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

102.1.2 Exam Application

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

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

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

102.1.3 Final Application

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

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

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

102.1.3.1.3 The fee for the federal registry.

R162-102-3. Renewal.

102.3.1 At least 30 days before expiration, a renewal notice shall be sent by the Division to the ~~registered,~~ licensed or certified appraiser at the mailing address shown on the Division records. The applicant for renewal must return the completed renewal notice and the

applicable renewal fee to the Division on or before the expiration shown on the notice.

102.3.1.1 The licensed or certified appraiser must return proof of completion of 28 hours of continuing education taken during the preceding two years.[

~~102.3.1.1.1 Even though the appraiser may have changed licensing categories, every third time the appraiser with a renewal date before January 1, 2004 renews, the appraiser will provide evidence of having completed, within the two years prior to the third renewal, a course in the Uniform Standards of Professional Appraisal Practice. This USPAP course may be either a 7-hour National USPAP course or any 15-hour USPAP course that includes passing of a final exam. The hours of credit from USPAP courses may be used to meet part of the continuing education requirement for that renewal period. The appraiser must obtain and study the Utah Real Estate Appraiser Licensing and Certification Act and the rules promulgated thereunder and must sign an attestation that he understands and will abide by them. Appraisers with a renewal date after January 1, 2004 will be required to comply with Section 102.3.1.1.4.~~

~~102.3.1.1.2 Those State Licensed Appraisers who were Senior Appraisers prior to May 3, 1999 and who completed a USPAP course after January 1, 1993 will not be required to complete the USPAP course again in order to renew until their third renewal following the date upon which they completed the USPAP course as long as their renewal date is before January 1, 2004. Those State Licensed Appraisers who have a renewal date that is after January 1, 2004 will be required to comply with Section 102.3.1.1.4.~~

~~102.3.1.1.3 Those appraisers who were State Registered Appraisers prior to May 3, 2001 and who completed a USPAP course after January 1, 1993 will not be required to complete the USPAP course again in order to renew until their third renewal following the date upon which they completed the USPAP course as long as their renewal date is before January 1, 2004. Those formerly State Registered Appraisers who have a renewal date that is after January 1, 2004 will be required to comply with Section 102.3.1.1.4.]~~

102.3.1.1.4 [Effective January 1, 2004, a]All appraisers must take the 7-hour National USPAP Update Course or its equivalent at least once every two years in order to maintain a license or certification. In order to qualify as continuing education for renewal, the course must have been taken from an instructor or instructors, at least one of whom is a State-Certified Residential or State-Certified General Appraiser and has been certified by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. Equivalency to the 7-hour National USPAP Update Course will be determined through the Course Approval Program of the Appraiser Qualifications Board (AQB) of the Appraisal Foundation.

102.3.2 If the renewal fee and documentation are not received within the prescribed time period, the license or certification shall expire.

102.3.2.1 A license or certification may be renewed for a period of 30 days after the expiration date upon payment of a late fee in addition to the requirements of Section 102.3.1.

102.3.2.2 After this 30-day period and until six months after the expiration date, the license or certification may be reinstated upon payment of a reinstatement fee in addition to the requirements of Section 102.3.1. It shall be grounds for disciplinary sanction if, after the expiration date, the individual continues to perform work for which a license or certification is required.

102.3.2.3 A person who does not renew a license or certification within six months after the expiration date shall be relicensed or recertified as prescribed for an original application. The applicant will

receive credit for previously credited prelicensing education. Applicants for a new license or certification will be required to complete a USPAP course and retake the examination for the classification for which they are applying.

102.3.3 If the Division has received renewal documents in a timely manner but the information is incomplete, the appraiser shall be extended a 15-day grace period to complete the application.

102.3.4 Renewal while on active military service. An appraiser who is unable to renew a license or certification because active military service has prevented the completion of the appraiser's required continuing education may submit a timely application for renewal that is complete, except for proof of continuing education, and may request that the application for renewal be held in suspense pending the completion of the continuing education requirement.

102.3.4.1 The appraiser will have 120 days after completion of active military service to complete the continuing education required for the renewal and submit proof of the continuing education to the Division.

102.3.4.2 An appraiser may not act as an appraiser in Utah after the expiration of the appraiser's current license while the appraiser's application for renewal is held in suspense by the Division pending the completion of military service and the completion of the continuing education required for renewal. The appraiser may not act as an appraiser in Utah until the appraiser submits proof of completion of the required continuing education and the appraiser's application for renewal is processed by the Division.

R162-102-5. Reciprocity.

102.5.1 An individual who is licensed or certified as an appraiser by another state may be licensed or certified in Utah by reciprocity on the following conditions:

102.5.1.1 The other state must have required the applicant to satisfactorily complete classroom hours of appraisal education approved by that state which are substantially equivalent in number to the hours required for the class of licensure or certification for which he is applying in Utah;

102.5.1.2 The education must have included a course in the Uniform Standards of Professional Appraisal Practice. [Effective January 1, 2003, t]The course must either be the 15-hour National USPAP Course or its equivalent. Equivalency to the 15-hour National USPAP Course will be determined through the Course Approval Program of the Appraiser Qualifications Board (AQB) of the Appraisal Foundation;

102.5.1.3 The applicant must obtain and study the Utah Real Estate Appraiser Licensing and Certification Act and the rules promulgated thereunder and must sign an attestation that he understands and will abide by them;

102.5.1.4 The applicant must have passed an examination which has been approved by the AQB for the class of licensure or certification for which he is applying;

102.5.1.5 If the applicant resides outside of the state of Utah, he must sign an irrevocable consent to service authorizing the Division to receive service of any lawful process on his behalf in any noncriminal proceeding arising out of his practice as an appraiser in this state;

102.5.1.6 The applicant must provide a complete licensing history sent directly to the Division by his home state and any other state in which he has been licensed, which shall include the applicant's full name, home and business addresses and telephone numbers, the date first licensed, the type or types of licenses or certifications held, the date the current license or certification expires, and a statement concerning

whether disciplinary action has ever been taken, or is pending, against the individual;

102.5.1.7 The applicant shall not have been convicted of a criminal offense involving moral turpitude relating to his ability to provide services as an appraiser; and

102.5.1.8 The applicant must agree, as a condition of licensure or certification, that he will furnish to the Division upon demand all records requested by the Division relating to his appraisal practice in Utah. Failure to do so will be considered grounds for revocation of license or certification.

KEY: real estate appraisals, licensing

Date of Enactment or Last Substantive Amendment: [June 28, 2006]2007

Notice of Continuation: February 15, 2007

Authorizing, and Implemented or Interpreted Law: 61-2b-6(1)(l)



Crime Victim Reparations, Administration **R270-1** Award and Reparation Standards

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29753

FILED: 03/30/2007, 11:02

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: All proposed changes are the result of an internal review by the Crime Victim Reparations (CVR) Board.

SUMMARY OF THE RULE OR CHANGE: The change in Section R270-1-4 allows providers of mental health services to request an extension of the mental health benefits before the maximum is actually reached. This reduces the likelihood of a break in mental health services to the victim while the request is being made and reviewed. In Section R270-1-10, changes the maximum transportation award from \$500 to \$1,000 to more accurately reflect the typical costs of transportation; clarifies that all crime-related transportation expenses will be considered; and makes technical wording changes. In Section R270-1-20, makes grammatical changes and corrects an erroneous cross-reference. In Section R270-1-22, groups the treatment of sexually-transmitted disease as an emergency department service rather than the collection of evidence, but makes no substantive changes. In Section R270-1-24, reinserts language that was inadvertently deleted during the last amendment.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63-25a-406(c)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** For Section R270-1-4, considering the request for an extension of mental health benefits before the maximum is reached is more efficient in personnel time than

doing so after the maximum has been reached. However, the efficiencies are likely too small to quantify. For Section R270-1-10, it is possible that this amendment will increase the total amount of transportation benefits paid to victims of crime, which would increase the total amount paid out of the CVR Fund. However, the CVR Board has been approving expenditures above the \$500 maximum on a case-by-case basis, so any increase is expected to be negligible. Sections R270-1-20, R270-1-22, and R270-1-24 involve only technical changes and will not result in any cost or savings.

❖ **LOCAL GOVERNMENTS:** None of these changes are expected to result in any direct cost or savings to local government because the changes do not impact local government. Rather, the changes impact individual victims of crime and the providers of mental health services. The technical changes have no impact on any other entity other than CVR.

❖ **OTHER PERSONS:** In Section R270-1-4, victims are less likely to need to pay out-of-pocket expenses for mental health services while the request for an extension is being reviewed.

This will increase efficiency for mental health providers as they are less likely to need to change billing practices while waiting for CVR to review their request. They will be able to continue providing services to victims as usual. In Section R270-1-10, victims are less likely to pay out of pocket transportation costs. However, as previously stated, the CVR Board has been approving many requests to exceed the current maximum so many victims are already realizing the benefit of this change. Sections R270-1-20, R270-1-22, and R270-1-24 involve only technical changes and will not result in any cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In Section R270-1-4, victims are less likely to need to pay out-of-pocket expenses for mental health services while the request for an extension is being reviewed. This will increase efficiency for mental health providers as they are less likely to need to change billing practices while waiting for CVR to review their request. They will be able to continue providing services to victims as usual. In Section R270-1-10, victims are less likely to pay out of pocket transportation costs. However, as previously stated, the CVR Board has been approving many requests to exceed the current maximum so many victims are already realizing the benefit of this change. Sections R270-1-20, R270-1-22, and R270-1-24 involve only technical changes and will not result in any cost or savings to other persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Section R270-1-4 changes will involve additional efficiencies for mental health providers as previously explained. Changes for Section R270-1-10 might have a positive impact on business if more victims engage in travel because the maximum is raised. However, many victims have been receiving increased benefits on a case-by-case basis. Sections R270-1-20, R270-1-22, and R270-1-24 make technical changes and will therefore not have any impact on businesses. Ronald B. Gordon, Director

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

**CRIME VICTIM REPARATIONS
ADMINISTRATION**

Room 200
350 E 500 S
SALT LAKE CITY UT 84111-3347, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Connie Wettlaufer at the above address, by phone at 801-238-2371, by FAX at 801-533-4127, or by Internet E-mail at cwettlaufer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2007

AUTHORIZED BY: Ronald B Gordon, Director

R270. Crime Victim Reparations, Administration.

R270-1. Award and Reparation Standards.

R270-1-4. Counseling Awards.

A. Pursuant to Subsections 63-25a-402(20) and 63-25a-411(4)(c), out-patient mental health counseling awards are subject to limitations as follows:

1. The reparation officer shall approve a standardized treatment plan.

2. The cost of initial evaluation and testing may not exceed \$300 and shall be part of the maximum allowed for counseling. For purposes herein, an evaluation shall be defined as diagnostic interview examination including history, mental status, or disposition, in order to determine a plan of mental health treatment.

3. Primary victims of a crime shall be eligible for a \$3500 maximum mental health counseling award.

(a) Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient and outpatient counseling.

4. Secondary victims of a crime shall be eligible for a \$2000 maximum mental health counseling award.

5. Extenuating circumstances warranting consideration of counseling beyond the maximum may be submitted by the mental health provider ~~after~~ when it appears likely that the maximum award ~~has been~~ will be reached.

6. Counseling costs will not be paid in advance but will be paid on an ongoing basis as victim is being billed.

7. Inpatient hospitalization, residential and day treatment shall be reviewed by the CVR Board or contracting agency who will make recommendations to the Reparation Officers regarding treatment. The CVR Board or contracting agency will review all levels of care and assign a reimbursement percentage based on the crime. All cases having less than a \$1000 balance may be determined by the Reparation Officer. Outpatient cases shall be reviewed at the same rate as inpatient reviews.

8. In-patient hospitalization shall only be considered when the treatment has been recommended by a licensed therapist in life-threatening situations. A direct relationship to the crime needs to be established. Acute in-patient hospitalization shall not exceed \$600 per day, which includes all ancillary expenses, and will be considered payment in full to the provider. Inpatient psychiatric visits will be limited to one visit per day with payment for the visit

made to the institution at the highest rate of the individuals providing therapy as set by rule. Reimbursement for testing costs may also be allowed. Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient hospitalization. All other secondary victims of other crime types are excluded.

9. Residential and day treatment shall only be considered when the treatment has been recommended by a licensed therapist to stabilize the victim's behavior and symptoms. Only facilities with 24 hour nursing care or 24 hour on call nursing care will be compensated for residential and day treatment. Residential and day treatment shall not be used for extended care of dysfunctional families and containment placements. A direct relationship to the crime needs to be established. Residential treatment shall not exceed \$300 per day and will be considered payment in full to the provider. Residential treatment shall be limited to 30 days, unless there are extenuating circumstances requiring extended care. All residential clients shall receive routine assessments from a psychiatrist and/or APRN at least once a week for medication management. Day treatment shall not exceed \$200 per day and will be capped at \$10,000. These charges will be considered payment in full to the provider. Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for residential and day treatment. All other secondary victims of other crime types are excluded.

10. Wilderness programs shall not be covered as an appropriate treatment modality when considering inpatient hospitalization, residential or day treatment.

11. Child sexual abuse victims under the age of 13 who become perpetrators shall only be considered for mental health treatment awards directly related to the victimization. Perpetrators age 13 and over who have been child sexual abuse victims shall not be eligible for compensation. The CVR Board or contracting agency for managed mental health care shall help establish a reasonable percentage regarding victimization treatment for inpatient, residential and day treatment. Out-patient claims shall be determined by the Reparation Officer on a case by case basis upon review of the mental health treatment plan.

12. Payment for mental health counseling shall only be made to licensed therapists; or to individuals working towards a license that provide certified verification of satisfactory completion of an education and earned degree as required by the State of Utah Department of Commerce, Division of Professional and Occupational Licensing, working under the supervision of a supervisor approved by the Division. Student interns otherwise eligible under 58-1-307(1)(b) Exceptions from licensure, and/or the institution/facility/agency responsible for the supervision of the student, shall not be eligible for payment under this rule for counseling services provided by the student.

13. Payment of hypnotherapy shall only be considered when treatment is performed by a licensed mental health therapist based upon an approved Treatment Plan.

14. The following maximum amounts shall be payable for mental health counseling:

(a) up to \$130 per hour for individual and family therapy performed by licensed psychiatrists, and up to \$65 per hour for group therapy;

(b) up to \$90 per hour for individual and family therapy performed by licensed psychologists and up to \$45 per hour for group therapy;

(c) up to \$70 per hour for individual and family therapy performed by a licensed master's level therapist or an Advanced Practice Registered Nurse, and up to \$35 per hour for group therapy. These rates shall also apply to therapists working towards a license and supervised by a licensed therapist;

(d) The above-mentioned rates shall apply to individuals performing treatment, and not those supervising treatment.

15. Chemical dependency specific treatment will not be compensated unless the Reparation Officer determines that it is directly related to the crime. The CVR Board may review extenuating circumstance cases.

R270-1-10. Moving, Transportation Expenses.

A. Pursuant to Subsection 63-25a-411(4)(a), victims of violent crime who suffer a traumatic experience or threat of bodily harm are allowed moving expenses up to \$2000. Board approval is needed where extenuating circumstances exist.

B. Transportation expenses up to ~~[\$500]~~\$1000 are allowed for crime-related travel including, but not limited to, participation in court hearings and parole hearings as well as[-] medical or mental health visits for primary and secondary victims. The Board may [approval is needed] approve travel expenses in excess of \$1000 where extenuating circumstances exist.

R270-1-20. Misconduct.

Pursuant to Subsections ~~[63-25a-402(21)]~~63-25a-402(22) and 63-25a-412(1)(b) misconduct shall be considered conduct which contributed to the victim's injury or death or ~~[engaged in]~~conduct ~~[in]~~which the victim could have reasonably foreseen could lead to injury or death. In determining whether the victim engaged in misconduct, the CVR staff shall consider any behavior of the victim that may have directly or indirectly contributed to the victim's injury or death including consent, provocation, verbal utterance, gesture, incitement, prior conduct of the victim or the ability of the victim to have reasonably avoided the incident upon which the claim is based.

R270-1-22. Sexual Assault Forensic Examinations.

A. Pursuant to Subsections 63-25a-402(19) and 63-25a-411(4)(i), the cost of sexual assault forensic examinations for gathering evidence and providing treatment may be paid by the CVR office in the amount of \$300.00 without photo documentation and up to \$600.00 with a photo examination. The CVR office may also pay for the cost of medication and up to 85% of the hospital expenses. The following agency guidelines need to be adhered to when making payments for sexual assault forensic examinations:

1. A sexual assault forensic examination shall be reported to law enforcement.
2. Victims shall not be charged for sexual assault forensic examinations.
3. The agency may reimburse any licensed health care facility that provides services for sexual assault forensic examinations.
4. The agency may reimburse licensed medical personnel trained to gather evidence of sexual assaults who perform sexual assault forensic examinations.
5. CVR may pay for the collection of evidence and not attempt to prove or disprove the allegation of sexual assault.
6. A request for reimbursement shall include the law enforcement case number or be signed by a law enforcement officer, victim/witness coordinator or medical provider.

7. The application or billing for the sexual assault forensic examination must be submitted to CVR within one year of the examination.

8. The billing for the sexual assault forensic examination shall:

- a. identify the victim by name, address, date of birth, Social Security number, telephone number, patient number;
- b. indicate the claim is for a sexual assault forensic examination; and
- c. itemize services and fees for services.

9. All collateral sources that are available for payment of the sexual assault forensic examination shall be considered before CVR Trust Fund monies are used. Pursuant to Subsection 63-25a-411(i), the Director may determine that reimbursement for a sexual assault forensic examination will not be reduced even though a claim could be recouped from a collateral source.

10. Evidence will be collected only with the permission of the victim or the legal guardian of the victim. Permission shall not be required in instances where the victim is unconscious, mentally incapable of consent or intoxicated.

11. Restitution for the cost of the sexual assault forensic examination may be pursued by the CVR office.

12. Payment for sexual assault forensic examinations shall be considered for the following:

a. Fees for the collection of evidence, for forensic documentation only, to include:

- i. history;
- ii. physical; and
- iii. collection of specimens and wet mount for sperm; ~~and~~
- ~~iv. treatment for the prevention of sexually transmitted disease up to four weeks].~~

b. Emergency department services to include:

- i. emergency room, clinic room or office room fee;
- ii. cultures for gonorrhea, chlamydia, trichomonas, and tests for other sexually transmitted disease;
- iii. serum blood test for pregnancy; ~~and~~
- iv. morning after pill or high dose oral contraceptives for the prevention of pregnancy; and
- v. treatment for the prevention of sexually transmitted disease up to four weeks.

13. The victim of a sexual assault that is requesting payment by CVR for services needed or rendered beyond the sexual assault forensic examination needs to submit an application for compensation to the CVR office.

R270-1-24. Rent Awards.

A. Pursuant to Subsection 63-25a-411(4)(a), victims of domestic violence or child abuse may be awarded for actual rent expenses for up to three months, not to exceed a maximum rent award of \$1800, if the following conditions apply:

1. The perpetrator was living with the victim at the time of the crime or the rent assistance appears directly related to the victim's ability to distance herself/himself from the perpetrator.
2. It appears reasonable that the perpetrator was assisting or was solely responsible for rent.
3. The victim agrees that the perpetrator is not allowed on the premises.
4. The victim submits a safety plan to CVR and the plan is approved by CVR.
5. The victim submits a self-sufficiency plan to CVR and the plan is approved by CVR.

6. The need for rent assistance is directly related to and caused by the crime upon which the claim is based.

B. No victim shall receive more than one rent award in their lifetime.

KEY: victim compensation, victims of crimes

Date of Enactment or Last Substantive Amendment: ~~January 10,~~ 2007

Notice of Continuation: July 3, 2006

Authorizing, and Implemented or Interpreted Law: 63-25a-401 et seq.



Health, Children's Health Insurance Program **R382-10** Eligibility

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29732

FILED: 03/26/2007, 10:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule implements Utah's Premium Partnership for Health Insurance (UPP) program. The UPP program is a Section 1115 Demonstration Waiver that allows the Department of Health to pool personal and employer funds from the Children's Health Insurance Program (CHIP) and Primary Care Network (PCN), and enables individuals and families to purchase health insurance through their employer. This rule also clarifies how the agency determines the due date for verifications and the effective date of CHIP enrollment.

SUMMARY OF THE RULE OR CHANGE: This rule defines an "employer-sponsored health plan" and outlines UPP service coverage. The rule also clarifies CHIP and UPP program enrollment options, CHIP program criteria, and parent and stepparent income requirements that determine CHIP program eligibility. This rule explains the CHIP enrollment option to not wait for the next open enrollment period when a child discontinues an employer-sponsored health insurance plan, clarifies how the agency determines the effective date of CHIP enrollment, and the due date for verifications. This rule also clarifies CHIP eligibility termination when a child enrolls in other health insurance coverage, and includes numbering changes, and other minor clarifications.

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

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 20 CFR 416(K) Appendix, 2006 ed.

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There is no budget impact because the rule allows CHIP to reimburse eligible children under the UPP program at the same amount as the current CHIP per member per month cost.

❖ **LOCAL GOVERNMENTS:** There is no budget impact because local governments do not fund the CHIP or UPP programs.

❖ **OTHER PERSONS:** There is no budget impact because though the CHIP client mix changes, the total number of recipients and payments remains the same.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because though the CHIP client mix changes, payments for a single client remain the same.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule to implement the UPP program should have a positive fiscal impact on business. Employer sponsored health plans will be supported. David N. Sundwall, MD, Executive Director

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

HEALTH
CHILDREN'S HEALTH INSURANCE PROGRAM
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:

Gayleen Henderson or Craig Devashrayee at the above address, by phone at 801-538-6135 or 801-538-6641, by FAX at 801-538-6860 or 801-538-6099, or by Internet E-mail at ghenderson@utah.gov or cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2007

AUTHORIZED BY: David N. Sundwall, Executive Director

R382. Health, Children's Health Insurance Program.

R382-10. Eligibility.

R382-10-1. Authority.

This rule sets forth the eligibility requirements for coverage under the Children's Health Insurance Program (CHIP). It is authorized by Title 26, Chapter 40.

R382-10-2. Definitions.

(1) The Department adopts the definitions found in Sections 2110(b) and (c) of the Social Security Act as enacted by Pub. L. No. 105-33 which ~~are~~ is incorporated by reference in this rule.

(2) ~~["The following additional definitions also apply:"]~~ "Agency" means any local office or outreach location of either the Department of Health or Department of Workforce Services that accepts and processes applications for CHIP.

(~~a~~)³ "Applicant[~~;~~]" means a child on whose behalf an application has been made for benefits under the Children's Health Insurance Program, but who is not an enrollee.

(~~b~~)⁴ "Best estimate" means the Department's determination of a household's income for the upcoming eligibility period, based on past and current circumstances and anticipated future changes.

(~~e~~)⁵ "Children's Health Insurance Program" or "CHIP" means the program for benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40.

(~~d~~)⁶ "Department" means the Utah ~~[State]~~ Department of Health.

(7) "Employer-sponsored health plan" means health insurance that meets the requirements of R414-320-2(8) (a) (b) (c) (d) and (e).

(~~e~~)⁸ "Income averaging" means a process of using a history of past or current income and averaging it over a determined period of time that is representative of future income.

(~~f~~)⁹ "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(~~g~~)¹⁰ "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(~~h~~)¹¹ "Local office" means any Bureau of Eligibility Services office location, outreach location, or telephone location where an individual may apply for medical assistance.

(~~i~~)¹² "Quarterly Premium" means a payment that enrollees must pay every ~~3~~³ three months to receive coverage under CHIP.

(~~j~~)¹³ "Renewal month" means the last month of the eligibility period for an enrollee.

(14) "Utah's Premium Partnership for Health Insurance" or "UPP" means the program described in R414-320.

(~~k~~)¹⁵ "Verifications" means the proofs needed to decide if a child meets the eligibility criteria to be enrolled in the program. Verifications may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of a child.

R382-10-3. Actions on Behalf of a Minor.

(1) A parent or an adult who has assumed responsibility for the care or supervision of a child may apply for CHIP enrollment, provide information required by this rule, or otherwise act on behalf of a child in all respects under the statutes and rules governing the CHIP program.

(a) The child, if 18 years old or an emancipated minor, the child's parent or legal guardian must indicate in writing to the Department who is authorized as the child's representative.

(b) The ~~[executive director of the]~~ Department ~~[or his designee]~~ may designate an authorized representative if the child needs a representative but is unable to make a choice either in writing or orally in the presence of a witness.

(2) Where the statutes or rules governing the CHIP program require a child to take an action, the parent or adult who has assumed responsibility for the care or supervision of the child is responsible to take the action on behalf of the child. If the parent or adult who has assumed responsibility for the care or supervision of the child fails to take an action, the failure is attributable as the child's failure to take the action.

(3) Notice to the parent or adult who has assumed responsibility for the care or supervision of the child is notice to the child.

R382-10-5. Verification and Information Exchange.

(1) The applicant and enrollee upon renewal must provide verification of eligibility factors as requested by the ~~[Department]~~ agency.

(a) ~~The agency will provide the enrollee a written request of the needed verifications.~~

(b) ~~The enrollee has at least 10 calendar days from the date the agency gives or mails the verification request to the enrollee to provide verifications.~~

(c) ~~The due date for returning verifications, forms or information requested by the agency is 5:00 p.m. on the date the agency sets as the due date in a written request to the enrollee, but not less than 10 calendar days from the date such request is given to or mailed to the enrollee.~~

(d) ~~The agency allows additional time to provide verifications if the enrollee requests additional time by the due date. The agency will set a new due date that is at least 10 days from the date the enrollee asks for more time to provide the verifications or forms.~~

(e) ~~If an enrollee has not provided required verifications by the due date, and has not contacted the agency to ask for more time to provide verifications, agency denies the application, renewal, or ends eligibility.~~

(2) The Department may release information concerning applicants and enrollees and their households to other state and federal agencies to determine eligibility for other public assistance programs.

(3) The Department must release information to the Title IV-D agency and Social Security Administration to determine benefits.

(4) The Department may verify information by exchanging information with other public agencies as described in 42 CFR 435.945, 435.948, 435.952, 435.955, and 435.960~~[, 1997 edition]~~.

R382-10-10. Creditable Health Coverage.

(1) To be eligible for enrollment in the program, a child must meet the requirements of Sections 2110(b)(1)(C) and (2)(B) of the Social Security Act as enacted by Pub. L. No. 105-33.

(2) A child who is covered under a group health plan or other health insurance coverage including coverage under a parent's or legal guardian's employer, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), is not eligible for CHIP assistance.

(3) A child who is covered under an absent parent's insurance coverage that does not provide coverage in the State of Utah is eligible for enrollment.

(4) A child who is covered under a group health plan or other health coverage but has reached the lifetime maximum coverage under that plan is eligible for enrollment.

(5) A child who has access to health insurance coverage, ~~[through an employer]~~ where the cost to enroll the child in the least expensive plan offered by the employer is less than 5% of the household's gross annual income, is not eligible for CHIP ~~[assistance]~~. The child is considered to have access to coverage even if the employer offers coverage only during an open enrollment period.

(6) A child who has access to an employer-sponsored health plan where the least expensive plan is equal to or greater than 5% of the household's gross annual income, and the employer offers an employer-sponsored health plan that meets the requirements of R414-320-2 (8) (a), (b), (c), (d) and (e), may choose to enroll in the employer-

sponsored health plan and receive reimbursement through the UPP program or may choose to enroll in the CHIP program.

(a) If the employer-sponsored health plan does not include dental benefits, the child may enroll in CHIP dental benefits.

(b) A child who chooses to enroll in the UPP program may switch to CHIP coverage at any time.

(~~6~~7) The Department shall deny eligibility if the applicant or a custodial parent has voluntarily terminated health insurance coverage in the 90 days prior to the application date for enrollment under CHIP.

(a) An applicant or applicant's parent(s) who voluntarily terminates coverage under a COBRA plan or under the Health Insurance Pool (HIP), or who is involuntarily terminated from an employer's plan is eligible for CHIP without a 90 day waiting period.

(b) An applicant who voluntarily terminates health insurance coverage purchased after the previous CHIP open enrollment period ended but before the beginning of the current open enrollment period and who met CHIP eligibility requirements at the time of purchase, is eligible for CHIP without a 90 day waiting period.

(~~7~~8) A child with creditable health coverage operated or financed by the Indian Health Services is not excluded from enrolling in the program.

(~~8~~9) An applicant must report at application and renewal whether any of the children in the household for whom enrollment is being requested has access to or is covered by a group health plan, other health insurance coverage, or a state employee's health benefits plan.

(~~9~~10) The Department shall deny an application or renewal if the enrollee fails to respond to questions about health insurance coverage for children the household seeks to enroll or renew in the program.

R382-10-13. Income Provisions.

To be eligible to enroll in the Children's Health Insurance Program, gross household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of equal size.

All gross income, earned and unearned, received by the parents and step[~~-~~]parents of any child who is included in the household size, is counted toward household income, unless this section specifically describes a different treatment of the income.

(1) The Department does not count income that is defined in 20 CFR 416(K) Appendix, [~~1997~~2006] edition, which is adopted and incorporated by reference.

(2) Any income in a trust that is available to, or is received by a household member, is countable income.

(3) Payments received from the Family Employment Program, General Assistance, or refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3 is countable income.

(4) Rental income is countable income. The following expenses can be deducted:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property;

(c) utility costs only if they are paid by the owner; and

(d) interest only on a loan or mortgage secured by the rental property.

(5) Deposits to joint checking or savings accounts are countable income, even if the deposits are made by a non-household member. An applicant or enrollee who disputes household ownership of deposits to joint checking or savings accounts shall be given an opportunity to prove that the deposits do not represent income to the household. Funds that are successfully disputed are not countable income.

(6) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(7) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the eligibility period.

(8) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service or did not work to receive is not counted as income.

(9) SSI and State Supplemental Payments are countable income.

(10) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(11) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

(12) Child Care Assistance under Title XX is not countable income.

(13) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the [~~State~~ Department [~~of Health~~]] are not countable income.

(14) Needs-based Veteran's pensions are not counted as income. If the income is not needs-based, only the portion of a Veteran's Administration check to which the individual is legally entitled is countable income.

(15) Income of a child is excluded if the child is not the head of a household.

(16) Educational income such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

(17) Reimbursements for expenses incurred by an individual are not countable income.

(18) Any payments made to an individual because of his status as a victim of Nazi persecution as defined in Pub. L. No. 103-286 are not countable income, including payments made by the Federal Republic of Germany, Austrian Social Insurance payments, and Netherlands WUV payments.

(19) Victim's Compensation payments as defined in Pub. L. No. 101-508 are not countable income.

(20) Disaster relief funds received if a catastrophe has been declared a major disaster by the President of the United States as defined in Pub. L. No. 103-286 are not countable income.

(21) Income of an alien's sponsor or the sponsor's spouse, is not countable income.

R382-10-14. Budgeting.

The following section describes methods that the Department will use to determine the household's countable monthly or annual income.

(1) The gross income [~~of all household members~~] for parents and stepparents of any child included in the household size is counted [~~in~~] to determin[~~ing~~] a child's eligibility [~~the eligibility of a child~~], unless the income is excluded under this rule. Only expenses that are required to make an income available to the individual are deducted from the gross income. No other deductions are allowed.

(2) The Department shall determine monthly income by taking into account the months of pay where an individual receives a fifth paycheck when paid weekly, or a third paycheck when paid every other week. The Department shall multiply the weekly amount by 4.3 to

obtain a monthly amount. The Department shall multiply income paid bi-weekly by 2.15 to obtain a monthly amount.

(3) The Department shall determine a child's eligibility and cost-sharing requirements prospectively for the upcoming eligibility period at the time of application and at each renewal for continuing eligibility.

The Department shall determine prospective eligibility by using the best estimate of the household's average monthly income that is expected to be received or made available to the household during the upcoming eligibility period. The Department shall prorate income that is received less often than monthly over the eligibility period to determine an average monthly income. The Department may request prior years' tax returns as well as current income information to determine a household's income.

(4) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The Department may use a combination of methods to obtain the most accurate best estimate. The best estimate may be a monthly amount that is expected to be received each month of the eligibility period, or an annual amount that is prorated over the eligibility period. Different methods may be used for different types of income received in the same household.

(5) The Department shall determine farm and self-employment income by using the individual's recent tax return forms. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the Department shall request income information from a recent time period during which the individual had farm or self-employment income. The Department shall deduct 40% of the gross income as a deduction for business expenses to determine the countable income of the individual. For individuals who have business expenses greater than 40%, the Department shall request expense information and deduct the expenses from the gross income. The Department shall deduct the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

(6) The Department may annualize income for any household and in particular for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

R382-10-16. Application and Renewal.

The application is the initial request from an applicant for CHIP enrollment for a child. The application process includes gathering information and verifications to determine the child's eligibility for enrollment in the program. Renewal is the process of gathering information and verifications on a periodic basis to determine continued eligibility of an enrollee.

(1) The applicant must complete and sign a written application to become enrolled in the program.

(2) The Department accepts any Department-approved application form for medical assistance programs offered by the state as an application for CHIP enrollment.

(3) Individuals may apply for enrollment during open enrollment periods in person, through the mail, by fax, or online.

(4) A family who has a child enrolled in CHIP, may enroll a new child born to or adopted by a household member without waiting for the next open enrollment period.

(5) A child who loses Medicaid coverage because he or she has reached the maximum age limit and does not qualify for any other Medicaid program without paying a spenddown, may enroll in CHIP without waiting for the next open enrollment period.

(6) A child who loses Medicaid coverage because he or she is no longer deprived of parental support and does not qualify for any other Medicaid program without paying a spenddown, may enroll in CHIP without waiting for the next open enrollment period.

(7) A child enrolled in the UPP program who discontinues his or her coverage under an employer-sponsored health plan, may enroll in CHIP without waiting for the next open enrollment period.

~~(7)8~~ The Department may interview applicants, the applicant's parents, and any adult who has assumed responsibility for the care or supervision of the child to assist in determining eligibility.

~~(8)9~~ If eligibility for CHIP enrollment ends, the Department shall review the case for eligibility under any other medical assistance program without requiring a new application. The Department may request additional verification from the household if there is insufficient information to make a determination.

R382-10-18. Effective Date of Enrollment and Renewal.

(1) The effective date of CHIP enrollment is the date a completed and signed application is received ~~[by the Department]~~ at a local office by 5:00 p.m. on a business day. This applies to paper applications delivered in person or by mail, paper applications sent via facsimile transmission, and electronic applications sent via the internet. If a local office receives an application after 5:00 p.m. of a business day, the effective date of CHIP enrollment is the next business day.

(2) The effective date of CHIP enrollment for applications delivered to an outreach location is as follows:

(a) If the application is delivered at a time when the outreach staff is working at that location, the effective date of enrollment is the date the outreach staff receives the application.

(b) If the application is delivered at a time when the outreach office is closed, including being closed for weekends or holidays, the effective date of enrollment is the last business day that a staff person from the state agency was available to receive or pick up applications from the location.

(3) The Department may allow a grace enrollment period beginning no earlier than four days before the date a completed and signed application is received by the Department. The Department shall not pay for any services received before the effective enrollment date.

~~(2)4~~ For a family who has a child enrolled in CHIP and who adds a newborn or adopted child, the effective date of enrollment is the date of birth or adoption if the family requests the coverage within 30 days of the birth or adoption. If the request is made more than 30 days after the birth or adoption, enrollment in CHIP will be effective beginning the date of report, except as otherwise provided in R382-10-18(1).

~~(3)5~~ The effective date of enrollment for a renewal is the first day of the month after the renewal month, if the renewal process is completed by the end of the renewal month, or by the last day of the month immediately following the renewal month, and the child continues to be eligible.

~~(4)6~~ If the renewal process is not completed by the end of the renewal month, the case will be closed unless the enrollee has good cause for not completing the renewal process on time. Good cause includes a medical emergency, death of an immediate family member, or natural disaster, or other similar occurrence.

~~(5)7~~ The Department may require an interview with the parent, child, or adult who has assumed responsibility for the care or supervision of a child, or other authorized representative as part of the renewal process.

R382-10-19. Open Enrollment Period.

(1) The Department accepts applications for enrollment at times when sufficient funding is available to justify enrolling more individuals. The Department limits the number it enrolls according to the funds available for the program.

(a) The Department shall notify the public of the open enrollment period 10 days in advance through a newspaper of general circulation.

(b) During an open enrollment period, the Department accepts applications in person, through the mail, by fax, or online. The Department sorts applications according to the date received. ~~When an application is received through the mail, the date of receipt is the date of the postmark. When an application is submitted online, the date of receipt is the date of electronic transmission.~~ If the applications received on a day exceed the number of openings available, the Department shall randomize all applications for that day and select the number needed to fill the openings.

(c) The Department will not accept applications prior to the open enrollment date, except as provided in R382-10-16.

R382-10-21. Quarterly Premiums.

(1) Each family with children enrolled in the CHIP program must pay a quarterly premium based on the countable income of the family during the first month of the quarter.

(a) A family whose countable income is equal to or less than 100% of the federal poverty level or who are American Indian pays no premium.

(b) A family with countable income greater than 100% and up to 150% of the federal poverty level must pay a quarterly premium of \$13~~[-00]~~.

(c) A family with countable income greater than 150% and up to 200% of the federal poverty level must pay a quarterly premium of \$25~~[-00]~~.

(2) A family who does not pay its quarterly premium by the premium due date will be terminated from CHIP. Coverage may be reinstated when any of the following events occur:

(a) The family pays the premium by the last day of the month immediately following the termination;

(b) The family's countable income decreased to below 100% of the federal poverty level prior to the first month of the quarter.

(c) The family's countable income decreases prior to the first month of the quarter and the family owes a lower premium amount. The new premium must be paid within 30 days.

(3) A family who was terminated from CHIP who reapplies within one year of the termination date, must pay any outstanding premiums before the children can be re-enrolled.

R382-10-22. Termination and Notice.

(1) The Department shall notify an applicant or enrollee in writing of the eligibility decision made on the application or at renewal.

(2) The Department shall notify an enrollee in writing ten days before taking a proposed action adversely affecting the enrollee's eligibility.

(3) Notices under this section shall provide the following information:

- (a) the action to be taken;
- (b) the reason for the action;
- (c) the regulations or policy that support the action;
- (d) the applicant's or enrollee's right to a hearing;
- (e) how an applicant or enrollee may request a hearing; and
- (f) the applicant's or enrollee's right to represent himself, or use legal counsel, a friend, relative, or other spokesperson.

(4) The Department need not give ten-day notice of termination if:

- (a) the child is deceased;
- (b) the child has moved out of state and is not expected to return;
- (c) the child has entered a public institution; or
- (d) the child has enrolled in other health insurance coverage, in which case eligibility ~~may cease immediately and~~ ends the day before the new coverage begins~~[-without prior notice].~~

R382-10-23. Case Closure or Withdrawal.

The [d]Department shall terminate a child's enrollment upon enrollee request or upon discovery that the child is no longer eligible. An applicant may withdraw an application for CHIP benefits any time prior to approval of the application.

KEY: children's health benefits

Date of Enactment or Last Substantive Amendment: ~~June 1, 2004~~**2007**

Notice of Continuation: June 10, 2003

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-40



Health, Epidemiology and Laboratory
Services, Epidemiology
R386-702
Communicable Disease Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29742

FILED: 03/28/2007, 14:50

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to make state communicable disease reporting requirements more consistent with national reporting requirements.

SUMMARY OF THE RULE OR CHANGE: The amendments clarify and update the diseases that health care providers must report to public health authorities. Health care providers will no longer be required to report cases of Reye syndrome, rheumatic fever, and Staphylococcus aureus infection with resistance to methicillin (MRSA). The types of reportable arboviral infections is clarified. The name for E. coli infections is updated to be compatible with current terminology. Poliovirus infection (nonparalytic) and vibriosis become reportable. Hepatitis A, Staphylococcus aureus with resistance to (VRSA) or intermediate resistance (VISA) to vancomycin isolated from any site, and E. coli and vibrio species isolates become immediately reportable. MRSA and vancomycin-resistant enterococci (VRE) infections are added to the list for voluntary full reporting. The language requiring the reporting of possible bioterrorism, pandemic diseases, and unusual outbreaks is modified. The name of the Office of Epidemiology is replaced with Bureau of Epidemiology.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-30 and 26-6-3, and Title 26, Chapter 23b

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Control of Communicable Disease Manual, 2004 ed.; and Compendium of Animal Rabies Prevention and Control, 2006 ed.

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: It is expected that these rule changes will have minimal cost or cost savings impact. MRSA and VRE are removed, however the cost savings for collecting and managing this data at the state level is expected to be minimal since they are currently reported in summary numbers only. Reye syndrome and rheumatic fever are also rarely reported, so their removal will likely result in minimal cost savings for staff collecting and managing data. Vibriosis and nonparalytic poliovirus infections are likely to be extremely rare, so their addition should have minimal cost associated with it for staff who will collect data for cases. It is expected that the minimal cost of adding vibriosis and nonparalytic poliovirus infections to the list of reportable conditions will be off-set by the minimal savings resulting from removal of other conditions.

❖ LOCAL GOVERNMENTS: It is expected that these rule changes will have minimal cost or cost savings impact. MRSA and VRE are removed, however the cost savings for collecting and managing this data at the local level is expected to be minimal since they are currently reported in summary numbers only. Reye syndrome and rheumatic fever are also rarely reported, so their removal will likely result in minimal cost savings for staff collecting and managing data. Vibriosis and nonparalytic poliovirus infections are likely to be extremely rare, so their addition should have minimal cost associated with it for staff who will collect data for, and manage, cases. It is expected that the minimal cost of adding vibriosis and nonparalytic poliovirus infections to the list of reportable conditions will be off-set by the minimal savings resulting from removal of other conditions.

❖ OTHER PERSONS: It is expected that these rule changes will have minimal cost or cost savings impact. MRSA and VRE are removed, however the cost savings for persons reporting this data is expected to be minimal since they are currently reported in summary numbers only. Reye syndrome and rheumatic fever are also rarely reported, so their removal will likely result in minimal cost savings for personnel required to report data. Vibriosis and nonparalytic poliovirus infections are likely to be extremely rare, so their addition should have minimal cost associated with it for staff who report cases. It is expected that the minimal cost of adding vibriosis and nonparalytic poliovirus infections to the list of reportable conditions will be off-set by the minimal savings resulting from removal of other conditions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs since the changes should result in savings or minimal costs for most affected entities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Reporting of communicable diseases is crucial to the mission of the Department to control

and eliminate threats to public health. Fiscal impact is predicted to be negligible. David N. Sundwall, MD, Executive Director

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

HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES,
EPIDEMIOLOGY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Melissa Stevens Dimond at the above address, by phone at 801-538-6810, by FAX at 801-538-9923, or by Internet E-mail at melissastevens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2007

AUTHORIZED BY: David N. Sundwall, Executive Director

**R386. Health, Community Health Services, Epidemiology.
R386-702. Communicable Disease Rule.
R386-702-3. Reportable Diseases, Emergency Illnesses, and Health Conditions.**

(1) The Utah Department of Health declares the following conditions to be of concern to the public health and reportable as required or authorized by Section 26-6 and Title 26, Chapter 23b of the Utah Health Code.

- (a) Acquired Immunodeficiency Syndrome
- (b) Adverse event resulting after smallpox vaccination
- (c) Amebiasis
- (d) Anthrax
- (e) Arbovirus infection, including Saint Louis encephalitis and West Nile virus infection
- (f) Botulism
- (g) Brucellosis
- (h) Campylobacteriosis
- (i) Chancroid
- (j) Chickenpox
- (k) Chlamydia trachomatis infection
- (l) Cholera
- (m) Coccidioidomycosis
- (n) Colorado tick fever
- (o) Creutzfeldt-Jakob disease and other transmissible human spongiform encephalopathies
- (p) Cryptosporidiosis
- (q) Cyclospora infection
- (r) Dengue fever
- (s) Diphtheria
- (t) Echinococcosis
- (u) Ehrlichiosis, human granulocytic, human monocytic, or unspecified

(v) Encephalitis
~~[(w) Enterococcal infection, vancomycin-resistant~~
 —(x)(w) Shiga toxin-producing [~~Enterohemorrhagic~~] Escherichia coli (~~EH~~STEC) infection, ~~including Escherichia coli O157:H7~~
 [(y)(x) Giardiasis
 [(z)(y) Gonorrhea: sexually transmitted and ophthalmia neonatorum
 [(aa)(z) Haemophilus influenzae, invasive disease
 [(bb)(aa) Hansen Disease (Leprosy)
 [(cc)(bb) Hantavirus infection and pulmonary syndrome
 [(dd)(cc) Hemolytic Uremic Syndrome, postdiarrheal
 [(ee)(dd) Hepatitis A
 [(ff)(cc) Hepatitis B, cases and carriers
 [(gg)(ff) Hepatitis C, acute and chronic infection
 [(hh)(gg) Hepatitis, other viral
 [(ii)(hh) Human Immunodeficiency Virus Infection. Reporting requirements are listed in R388-803[-]
 [(jj)(ii) Influenza-associated hospitalization
 [(kk)(jj) Influenza-associated death, ~~if the individual was~~ in a person less than 18 years of age
 [(ll)(kk) Legionellosis
 [(mm)(ll) Listeriosis
 [(nn)(mm) Lyme Disease
 [(oo)(nn) Malaria
 [(pp)(oo) Measles
 [(qq)(pp) Meningitis, ~~aseptic and bacterial (specify etiology)~~
 [(rr)(qq) Meningococcal Disease, ~~invasive~~
 [(ss)(rr) Mumps
 [(tt)(ss) Norovirus, formerly called Norwalk-like virus, infection
 [(uu)(tt) Pelvic Inflammatory Disease
 [(vv)(uu) Pertussis
 [(ww)(vv) Plague
 [(xx)(ww) Poliomyelitis, paralytic
 (xx) Poliovirus infection, nonparalytic
 (yy) Psittacosis
 (zz) Q Fever
 (aaa) Rabies, human and animal
 (bbb) Relapsing fever, tick-borne and louse-borne
 [(ccc) ~~Reye syndrome~~
 —(ddd) ~~Rheumatic fever~~
 —(eee)(ccc) Rocky Mountain spotted fever
 [(fff)(ddd) Rubella
 [(ggg)(eee) Rubella, congenital syndrome
 [(hhh) ~~Saint Louis encephalitis~~
 —(iii)(fff) Salmonellosis
 [(jjj)(ggg) Severe Acute Respiratory Syndrome (SARS)
 [(kkk)(hhh) Shigellosis
 [(lll)(iii) Smallpox
 [(mmm) ~~Staphylococcal diseases, all outbreaks~~
 —(nnn)(jjj) Staphylococcus aureus with resistance or intermediate resistance to vancomycin isolated from any site
 [(ooo) ~~Staphylococcus aureus with resistance to methicillin isolated from any site~~
 —(ppp)(kkk) Streptococcal disease, invasive, organism isolated from a normally sterile site
 [(qqq) ~~Streptococcus pneumoniae, drug resistant, isolated from a normally sterile site~~
 —(rrr)(lll) Syphilis, all stages and congenital
 [(sss)(mmm) Tetanus
 [(ttt)(nnn) Toxic-Shock Syndrome, staphylococcal or streptococcal
 [(uuu)(ooo) Trichinosis

~~[(vvv)(ppp) Tuberculosis. Special Measures for the Control of Tuberculosis are listed in R388-804.~~

~~[(www)(qqq) Tularemia
 [(xxx)(rrr) Typhoid, cases and carriers
 —(sss) Vibriosis
 [(yyy)(ttt) Viral hemorrhagic fever
 [(zzz) ~~West Nile virus infection~~
 —(aaa)(uuu) Yellow fever
 [(bbb)(vvv) Any outbreak or epidemic, including suspected or confirmed outbreaks of foodborne or waterborne disease. Any unusual occurrence of infectious or communicable disease or any unusual or increased occurrence of any illness that may indicate ~~an outbreak, epidemic, Bioterrorism event, or public health hazard, including any newly recognized, emergent or re-emergent disease or disease-producing agent, including newly identified multi-drug resistant bacteria.~~ a Bioterrorism event or public health hazard, including any single case or multiple cases of a newly recognized, emergent or re-emergent disease or disease-producing agent, including newly identified multi-drug resistant bacteria or a novel influenza strain such as a pandemic influenza strain.~~

~~(www) Any outbreak, epidemic, or unusual or increased occurrence of any illness that may indicate an outbreak or epidemic. This includes suspected or confirmed outbreaks of foodborne disease, waterborne disease, disease caused by antimicrobial resistant organisms, any infection that may indicate a bioterrorism event, or of any infection that may indicate a public health hazard.~~

(2) In addition to the reportable conditions set forth in R386-702-3(1) the Department declares the following reportable emergency illnesses or health conditions to be of concern to the public health and reporting is authorized by Title 26, Chapter 23b, Utah Code, unless made mandatory by the declaration of a public health emergency[-]:

(a) respiratory illness (including upper or lower respiratory tract infections, difficulty breathing and Adult Respiratory Distress Syndrome);

(b) gastrointestinal illness (including vomiting, diarrhea, abdominal pain, or any other gastrointestinal distress);

(c) influenza-like constitutional symptoms and signs;

(d) neurologic symptoms or signs indicating the possibility of meningitis, encephalitis, or unexplained acute encephalopathy or delirium;

(e) rash illness;

(f) hemorrhagic illness;

(g) botulism-like syndrome;

(h) lymphadenitis;

(i) sepsis or unexplained shock;

(j) febrile illness (illness with fever, chills or rigors);

(k) nontraumatic coma or sudden death; and

(l) other criteria specified by the Department as indicative of disease outbreaks or injurious exposures of uncertain origin.

R386-702-4. Reporting.

(1) Each reporting entity shall report each confirmed case and any case who the reporting entity believes in its professional judgment is likely to harbor an illness, infection, or condition reportable under R386-702-3(1), and each outbreak, epidemic, or unusual occurrence described in R386-1)(~~bbb~~)(vvv) or (www) to the local health department or to the [Office]Bureau of Epidemiology, Utah Department of Health. Unless otherwise specified, the report of these diseases to the local health department or to the [Office]Bureau of Epidemiology, Utah Department of Health shall provide the following information: name, age, sex, address, date of onset, and all other

information as prescribed by the Department. A standard report form has been adopted and is supplied to physicians and other reporting entities by the Department. Upon receipt of a report, the local health department shall promptly forward a written or electronic copy of the report to the ~~[Office]~~Bureau of Epidemiology, Utah Department of Health.

(2) Where immediate reporting is required, the reporting entity shall report as soon as possible, but not later than 24 hours after identification. Immediate reporting shall be made by telephone to the local health department or to the ~~[Office]~~Bureau of Epidemiology, Utah Department of Health at 801-538-6191 or 888-EPI-UTAH (888-374-8824). All diseases not required to be reported immediately or by number of cases shall be reported within three working days from the time of identification. Reporting entities shall send reports to the local health department or the ~~[Office]~~Bureau of Epidemiology, 288 North 1460 West, P. O. Box 142104, Salt Lake City, Utah 84114-2104.

(3) Entities Required to Report Communicable Diseases: Title 26, Chapter 6, Section 6 Utah Code lists those individuals and facilities required to report diseases known or suspected of being communicable.

(a) Physicians, hospitals, health care facilities, home health agencies, health maintenance organizations, and other health care providers shall report details regarding each case.

(b) Schools, child day care centers, and citizens shall provide any relevant information.

(c) Laboratories and other testing sites shall report laboratory evidence confirming any of the reportable diseases. Laboratories and other testing sites shall also report any test results that provide presumptive evidence of infection such as positive tests for syphilis, measles, and viral hepatitis.

(d) Pharmacists shall report unusual prescriptions or patterns of prescribing as specified in section 26-23b-105.

(4) Immediately Reportable Conditions: Cases and suspect cases of anthrax, botulism, cholera, diphtheria, Haemophilus influenzae (invasive disease), hepatitis A, measles, meningococcal disease, ~~[pertussis,]~~plague, poliomyelitis, rabies, rubella, Severe Acute Respiratory Syndrome (SARS), smallpox, Staphylococcus aureus with resistance (VRSA) or intermediate resistance (VISA) to vancomycin isolated from any site, syphilis (primary or secondary stage), tuberculosis, tularemia, typhoid, viral hemorrhagic fever, yellow fever, and any condition described in R386-702-3(1)~~[(bbb)]~~~~[(vvv) or (www)]~~ are to be made immediately as provided in R386-702-4(2).

(5) ~~[Staphylococcus aureus (MRSA) and vancomycin resistant enterococcus (VRE) shall be reported monthly by number of cases. Full reporting of all relevant patient information related to methicillin-resistant Staphylococcus aureus (MRSA) infections, [and] vancomycin-resistant enterococcal (VRE) infections, [cases] and laboratory-confirmed influenza are [is-]authorized and may be required by local or state health department personnel for purposes of public health investigation of a documented threat to public health.~~

(6) Reports of emergency illnesses or health conditions under R386-702-3(2) shall be made as soon as practicable using a process and schedule approved by the Department. Full reporting of all relevant patient information is authorized. The report shall include at least, if known~~[-,]~~~~[the name of the facility, a patient identifier, the date and time of visit, the patient's age and sex, the zip code of the patient's residence, the reportable condition suspected and whether the patient was admitted to the hospital. Full reporting of all relevant patient information is authorized.]~~

_____ (a) name of the facility;

_____ (b) a patient identifier;

_____ (c) date of visit;

_____ (d) time of visit;

_____ (e) patient's age;

_____ (f) patient's sex;

_____ (g) zip code of patient's residence;

_____ (h) the reportable condition suspected; and

_____ (i) whether the patient was admitted to the hospital.

(7) An entity reporting emergency illnesses or health conditions under R386-702-3(2) is authorized to report on other encounters during the same time period that do not meet definition for a reportable emergency illness or health condition. Submission of an isolate does not replace the requirement to report the case also to the local health department or Bureau of Epidemiology, Utah Department of Health. The report shall include the following information for each such encounter:

(a) facility name;

(b) date of visit;

(c) time of visit;

(d) patient's age;

(e) patient's sex; and

(f) patient's zip code for patient's residence~~[-]~~.

(8) Mandatory Submission of Isolates: Laboratories shall submit all isolates of the following organisms to the Utah Department of Health, public health laboratory:

(a) Bacillus anthracis;

(b) Bordetella pertussis;

(c) Brucella species;

(d) Campylobacter species;

(e) Clostridium botulinum;

(f) Corynebacterium diphtheriae;

~~[(g) Enterococcus, vancomycin resistant;~~

~~[(h)](g) Shiga toxin-producing Escherichia coli (STEC) (including enrichment and/or MacKonkey broths that tested positive by enzyme immunoassay for Shiga toxin) [-, enterohemorrhagic];~~

~~[(+)](h) Francisella tularensis;~~

~~[(+)](i) Haemophilus influenzae, from normally sterile sites;~~

~~[(+)](j) Influenza, types A and B;~~

~~[(+)](k) Legionella species;~~

~~[(+)](l) Listeria monocytogenes;~~

~~[(+)](m) Mycobacterium tuberculosis complex;~~

~~[(+)](n) Neisseria gonorrhoeae;~~

~~[(+)](o) Neisseria meningitidis, from normally sterile sites;~~

~~[(+)](p) Salmonella species;~~

~~[(+)](q) Shigella species;~~

~~[(+)](r) Staphylococcus aureus with resistance or intermediate resistance to vancomycin isolated from any site;~~

~~[(+)](s) Vibrio [cholera] species;~~

~~[(+)](t) Yersinia species; and~~

~~[(+)](u) any organism implicated in an outbreak when instructed by authorized local or state health department personnel.~~

~~[— Submission of an isolate does not replace the requirement to report the case also to the local health department or Office of Epidemiology, Utah Department of Health.~~

(9) Epidemiological Review: The Department or local health department may conduct an investigation, including review of the hospital and health care facility medical records and contacting the individual patient to protect the public's health.

(10) Confidentiality of Reports: All reports required by this rule are confidential and are not open to public inspection. Nothing in this rule, however, precludes the discussion of case information with the attending physician or public health workers. All information collected pursuant to this rule may not be released or made public, except as

provided by Section 26-6-27. Penalties for violation of confidentiality are prescribed in Section 26-6-29.

R386-702-5. General Measures for the Control of Communicable Diseases.

(1) The local health department shall maintain all reportable disease records as needed to enforce Chapter 6 of the Health Code and this rule, or as requested by the Utah Department of Health.

(2) General Control Measures for Reportable Diseases.

(a) The local health department shall, when an unusual or rare disease occurs in any part of the state or when any disease becomes so prevalent as to endanger the state as a whole, contact the ~~Office~~Bureau of Epidemiology, Utah Department of Health for assistance, and shall cooperate with the representatives of the Utah Department of Health.

(b) The local health department shall investigate and control the causes of epidemic, infectious, communicable, and other disease affecting the public health. The local health department shall also provide for the detection, reporting, prevention, and control of communicable, infectious, and acute diseases that are dangerous or important or that may affect the public health. The local health department may require physical examination and measures to be performed as necessary to protect the health of others.

(c) If, in the opinion of the local health officer it is necessary or advisable to protect the public's health that any person shall be kept from contact with the public, the local health officer shall establish, maintain and enforce involuntary treatment, isolation and quarantine as provided by Section 26-6-4. Control measures shall be specific to the known or suspected disease agent. Guidance is available from the ~~Office~~Bureau of Epidemiology, Utah Department of Health or official reference listed in R386-702-11.

(3) Prevention of the Spread of Disease From a Case.

The local health department shall take action and measures as may be necessary within the provisions of Section 26-6-4; Title 26, Chapter 6b; and this rule, to prevent the spread of any communicable disease, infectious agent, or any other condition which poses a public health hazard. Action shall be initiated upon discovery of a case or upon receipt of notification or report of any disease.

(4) Public Food Handlers.

A person known to be infected with a communicable disease that can be transmitted by food, water, or milk, or who is suspected of being infected with such a disease may not engage in the commercial handling of food, water, or other drink or be employed in a dairy or on any premises handling milk or milk products, until he is determined by the local health department to be free of communicable disease, or incapable of transmitting the infection.

(5) Communicable Diseases in Places Where Milk or Food Products are Handled or Processed.

If a case, carrier, or suspected case of a disease that can be conveyed by milk or food products is found at any place where milk or food products are handled or offered for sale, or if a disease is found or suspected to have been transmitted by these milk or food products, the local health department may immediately prohibit the sale, or removal of milk and all other food products from the premises. Sale or distribution of milk or food products from the premise may be resumed when measures have been taken to eliminate the threat to health from the food and its processing as prescribed by R392-100.

(6) Request for State Assistance.

If a local health department finds it is not able to completely comply with this rule, the local health officer or his representative shall request the assistance of the Utah Department of Health. In such

circumstances, the local health department shall provide all required information to the ~~Office~~Bureau of Epidemiology. If the local health officer fails to comply with the provisions of this rule, the Utah Department of Health shall take action necessary to enforce this rule.

(7) Approved Laboratories.

Laboratory analyses which are necessary to identify the causative agents of reportable diseases or to determine adequacy of treatment of patients with a disease shall be ordered by the physician or other health care provider to be performed in or referred to a laboratory holding a valid certificate under the Clinical Laboratory Improvement Amendments of 1988.

R386-702-6. Special Measures for Control of Rabies.

(1) Rationale of Treatment.

A physician must evaluate individually each exposure to possible rabies infection. The physician shall also consult with local or state public health officials if questions arise about the need for rabies prophylaxis.

(2) Management of Biting Animals.

(a) A healthy dog, cat, or ferret that bites a person shall be confined and observed at least daily for ten days from the date of bite as specified by local animal control ordinances. It is recommended that rabies vaccine not be administered during the observation period. Such animals shall be evaluated by a veterinarian at the first sign of illness during confinement. A veterinarian or animal control officer shall immediately report any illness in the animal to the local health department. If signs suggestive of rabies develop, a veterinarian or animal control officer shall direct that the animal be euthanized, its head removed, and the head shipped under refrigeration, not frozen, for examination of the brain by a laboratory approved by the Utah Department of Health.

(b) If the dog, cat, or ferret shows no signs of rabies or illness during the ten day period, the veterinarian or animal control officer shall direct that the unvaccinated animal be vaccinated against rabies at the owner's expense before release to the owner. If a veterinarian is not available, the animal may be released, but the owner shall have the animal vaccinated within 72 hours of release. If the dog, cat, or ferret was appropriately vaccinated against rabies before the incident, the animal may be released from confinement after the 10-day observation period with no further restrictions.

(c) Any stray or unwanted dog, cat, or ferret that bites a person may be euthanized immediately by a veterinarian or animal control officer, if permitted by local ordinance, and the head submitted, as described in R386-702-6(2)(a), for rabies examination. If the brain is negative by fluorescent-antibody examination for rabies, one can assume that the saliva contained no virus, and the person bitten need not be treated.

(d) Wild animals include raccoons, skunks, coyotes, foxes, bats, the offspring of wild animals crossbred to domestic dogs and cats, and any carnivorous animal other than a domestic dog, cat, or ferret.

(e) Signs of rabies in wild animals cannot be interpreted reliably. If a wild animal bites or scratches a person, the person or attending medical personnel shall notify an animal control or law enforcement officer. A veterinarian, animal control officer or representative of the Division of Wildlife Resources shall kill the animal at once, without unnecessary damage to the head, and submit the brain, as described in R386-702-6(2)(a), for examination for evidence of rabies. If the brain is negative by fluorescent-antibody examination for rabies, one can assume that the saliva contained no virus, and the person bitten need not be treated.

(f) Rabbits, opossums, squirrels, chipmunks, rats, and mice are rarely infected and their bites rarely, if ever, call for rabies prophylaxis or testing. Unusual exposures to any animal should be reported to the local health department or the [Office]Bureau of Epidemiology, Utah Department of Health.

(g) When rare, valuable, captive wild animals maintained in zoological parks approved by the United States Department of Agriculture or research institutions, as defined by Section 26-26-1, bite or scratch a human, the [Office]Bureau of Epidemiology, Utah Department of Health shall be notified. The provisions of subsection R386-702-6(2)(e) may be waived by the [Office]Bureau of Epidemiology, Utah Department of Health if zoological park operators or research institution managers can demonstrate that the following rabies control measures are established:

(i) Employees who work with the animal have received preexposure rabies immunization.

(ii) The person bitten by the animal voluntarily agrees to accept postexposure rabies immunization provided by the zoological park or research facility.

(iii) The director of the zoological park or research facility shall direct that the biting animal be held in complete quarantine for a minimum of 180 days. Quarantine requires that the animal be prohibited from direct contact with other animals or humans.

(h) Any animal bitten or scratched by a wild, carnivorous animal or a bat that is not available for testing shall be regarded as having been exposed to rabies.

(i) For maximum protection of the public health, unvaccinated dogs, cats, and ferrets bitten or scratched by a confirmed or suspected rabid animal shall be euthanized immediately by a veterinarian or animal control officer. If the owner is unwilling to have the animal euthanized, the local health officer shall order that the animal be held in strict isolation in a municipal or county animal shelter or a veterinary medical facility approved by the local health department, at the owner's expense, for at least six months and vaccinated one month before being released. If any illness suggestive of rabies develops in the animal, the veterinarian or animal control officer shall immediately report the illness to the local health department and the veterinarian or animal control officer shall direct that the animal be euthanized and the head shall be handled as described in subsection R386-702-6(2)(a).

(j) Dogs, cats, and ferrets that are currently vaccinated and are bitten by rabid animals, shall be revaccinated immediately by a veterinarian and confined and observed by the animal's owner for 45 days. If any illness suggestive of rabies develops in the animal, the owner shall report immediately to the local health department and the animal shall be euthanized by a veterinarian or animal control officer and the head shall be handled as described in subsection R386-702-6(2)(a).

(k) Livestock exposed to a rabid animal and currently vaccinated with a vaccine approved by the United States Department of Agriculture for that species shall be revaccinated immediately by a veterinarian and observed by the owner for 45 days. Unvaccinated livestock shall be slaughtered immediately. If the owner is unwilling to have the animal slaughtered, the animal shall be kept under close observation by the owner for six months.

(l) Unvaccinated animals other than dogs, cats, ferrets, and livestock bitten by a confirmed or suspected rabid animal shall be euthanized immediately by a veterinarian or animal control officer.

(3) Measures for Standardized Rabies Control Practices.

(a) Humans requiring either pre- or post-exposure rabies prophylaxis shall be treated in accordance with the recommendations of the U.S. Public Health Service Immunization Practices Advisory

Committee, as adopted and incorporated by reference in R386-702-11(2). A copy of the recommendations shall be made available to licensed medical personnel, upon request to the [Office]Bureau of Epidemiology, Utah Department of Health.

(b) A physician or other health care provider that administers rabies vaccine shall immediately report all serious systemic neuroparalytic or anaphylactic reactions to rabies vaccine to the [Office]Bureau of Epidemiology, Utah Department of Health, using the process described in R386-702-4.

(c) The Compendium of Animal Rabies Prevention and Control, as adopted and incorporated by reference in R386-702-11(3), is the reference document for animal vaccine use.

(d) A county, city, town, or other political subdivision that requires licensure of animals shall also require rabies vaccination as a prerequisite to obtaining a license.

(e) Animal rabies vaccinations are valid only if performed by or under the direction of a licensed veterinarian in accordance with the Compendium of Animal Rabies Prevention and Control.

(f) All agencies and veterinarians administering vaccine shall document each vaccination on the National Association of State Public Health Veterinarians (NASPHV) form number 51, Rabies Vaccination Certificate, which can be obtained from vaccine manufacturers. The agency or veterinarian shall provide a copy of the report to the animal's owner. Computer-generated forms containing the same information are also acceptable.

(g) Animal rabies vaccines may be sold or otherwise provided only to licensed veterinarians or veterinary biologic supply firms. Animal rabies vaccine may be purchased by the Utah Department of Health and the Utah Department of Agriculture.

(4) Measures to Prevent or Control Rabies Outbreaks.

(a) The most important single factor in preventing human rabies is the maintenance of high levels of immunity in the pet dog, cat, and ferret populations through vaccination.

(i) All dogs, cats, and ferrets in Utah should be immunized against rabies by a licensed veterinarian; and

(ii) Local governments should establish effective programs to ensure vaccination of all dogs, cats, and ferrets and to remove strays and unwanted animals.

(b) If the Utah Department of Health determines that a rabies outbreak is present in an area of the state, the Utah Department of Health may require that:

(i) all dogs, cats, and ferrets in that area and adjacent areas be vaccinated or revaccinated against rabies as appropriate for each animal's age;

(ii) any such animal be kept under the control of its owner at all times until the Utah Department of Health declares the outbreak to be resolved;

(iii) an owner who does not have an animal vaccinated or revaccinated surrender the animal for confinement and possible destruction; and

(iv) such animals found at-large be confined and possibly destroyed.

R386-702-7. Special Measures for Control of Typhoid.

(1) Because typhoid control measures depend largely on sanitary precautions and other health measures designed to protect the public, the local health department shall investigate each case of typhoid and strictly manage the infected individual according to the following outline:

(2) Cases: Standard precautions are required during hospitalization. Use contact precautions for diapered or incontinent

children under 6 years of age for the duration of illness. Hospital care is desirable during acute illness. Release of the patient from supervision by the local health department shall be based on three or more negative cultures of feces, and of urine in patients with schistosomiasis, taken at least 24 hours apart. Cultures must have been taken at least 48 hours after antibiotic therapy has ended and not earlier than one month after onset of illness as specified in R386-702-7(6). If any of these cultures is positive, repeat cultures at intervals of one month during the 12-month period following onset until at least three consecutive negative cultures are obtained as specified in R386-702-7(6). The patient shall be restricted from food handling and from providing patient care during the period of supervision by the local health department.

(3) Contacts: Administration of typhoid vaccine is required for all household members of known typhoid carriers. Household and close contacts shall not be employed in occupations likely to facilitate transmission of the disease, such as food handling, during the period of contact with the infected person until at least two negative feces and urine cultures, taken at least 24 hours apart, are obtained from each contact.

(4) Carriers: If a laboratory or physician identifies a carrier of typhoid, the attending physician shall immediately report the details of the case by telephone to the local health department or the [Office]Bureau of Epidemiology, Utah Department of Health using the process described in R386-702-4. Each infected individual shall submit to the supervision of the local health department. Carriers are prohibited from food handling and patient care until released in accordance with R386-702-7(4)(a) or R386-702-7(4)(b). All reports and orders of supervision shall be kept confidential and may be released only as allowed by Subsection 26-6-27(2)(c).

(a) Convalescent Carriers: Any person who harbors typhoid bacilli for three but less than 12 months after onset is defined as a convalescent carrier. Release from occupational and food handling restrictions may be granted at any time from three to 12 months after onset, as specified in R386-702-7(6).

(b) Chronic Carriers: Any person who continues to excrete typhoid bacilli for more than 12 months after onset of typhoid is a chronic carrier. Any person who gives no history of having had typhoid or who had the disease more than one year previously, and whose feces or urine are found to contain typhoid bacilli is also a chronic carrier.

(c) Other Carriers: If typhoid bacilli are isolated from surgically removed tissues, organs, including the gallbladder or kidney, or from draining lesions such as osteomyelitis, the attending physician shall report the case to the local health department or the [Office]Bureau of Epidemiology, Utah Department of Health. If the person continues to excrete typhoid bacilli for more than 12 months, he is a chronic carrier and may be released after satisfying the criteria for chronic carriers in R386-702-7(6).

(5) Carrier Restrictions and Supervision: The local health department shall report all typhoid carriers to the [Office]Bureau of Epidemiology, and shall:

- (a) Require the necessary laboratory tests for release;
- (b) Issue written instructions to the carrier;
- (c) Supervise the carrier.

(6) Requirements for Release of Convalescent and Chronic Carriers: The local health officer or his representative may release a convalescent or chronic carrier from occupational and food handling restrictions only if at least one of the following conditions is satisfied:

(a) For carriers without schistosomiasis, three consecutive negative cultures obtained from fecal specimens authenticated by the

attending physician, hospital personnel, laboratory personnel, or local health department staff taken at least one month apart and at least 48 hours after antibiotic therapy has stopped;

(b) for carriers with schistosomiasis, three consecutive negative cultures obtained from both fecal and urine specimens authenticated by the attending physician, hospital personnel, laboratory personnel, or local health department staff taken at least one month apart and at least 48 hours after antibiotic therapy has stopped; or

(c) the local health officer or his representative determine that additional treatment such as cholecystectomy or nephrectomy has terminated the carrier state.

R386-702-10. Public Health Emergency.

(1) Declaration of Emergency: With the Governor's and Executive Director's or in the absence of the Executive Director, his designee's, concurrence, the Department or a local health department may declare a public health emergency by issuing an order mandating reporting emergency illnesses or health conditions specified in sections R386-702-3 for a reasonable time.

(2) For purposes of an order issued under this section and for the duration of the public health emergency, the following definitions apply.

(a) "emergency center" means:

(i) a health care facility licensed under the provisions of Title 26, Chapter 21, Utah Code, that operates an emergency department; or

(ii) a clinic that provides emergency or urgent health care to an average of 20 or more persons daily[;].

(b) "encounter" means an instance of an individual presenting at the emergency center who satisfies the criteria in section R386-702-3(2); and

(c) "diagnostic information" means an emergency center's records of individuals who present for emergency or urgent treatment, including the reason for the visit, chief complaint, results of diagnostic tests, presenting diagnosis, and final diagnosis, including diagnostic codes.

(3) Reporting Encounters: The Department shall designate the fewest number of emergency centers as is practicable to obtain the necessary data to respond to the emergency.

(a) Designated emergency centers shall report using the process described in R386-702-4.

(b) An emergency center designated by the Department shall report the encounters to the Department by:

(i) allowing Department representatives or agents, including local health department representatives, to review its diagnostic information to identify encounters during the previous day; or

(ii) reviewing its diagnostic information on encounters during the previous day and reporting all encounters by 9:00 a.m. the following day, or

(iii) identifying encounters and submitting that information electronically to the Department, using a computerized analysis method, and reporting mechanism and schedule approved by the Department; or

(iv) by other arrangement approved by the Department.

(4) For purposes of epidemiological and statistical analysis, the emergency center shall report on encounters during the public health emergency that do not meet the definition for a reportable emergency illness or health condition. The report shall be made using the process described in 702-9(3)(b) and shall include the following information for each such encounter:

- (a) facility name;
- (b) date of visit;

- (c) time of visit;
- (d) patient's age;
- (e) patient's sex;
- (f) patient's zip code for patient's residence[5].

(5) If either the Department or a local health department collects identifying health information on an individual who is the subject of a report made mandatory under this section, it shall destroy that identifying information upon the earlier of its determination that the information is no longer necessary to carry out an investigation under this section or 180 days after the information was collected. However, the Department and local health departments shall retain identifiable information gathered under other sections of this rule or other legal authority.

(6) Reporting on encounters during the public health emergency does not relieve a reporting entity of its responsibility to report under other sections of this rule or other legal authority.

R386-702-12. Official References.

All treatment and management of individuals and animals who have or are suspected of having a communicable or infectious disease that must be reported pursuant to this rule shall comply with the following documents, which are adopted and incorporated by reference:

(1) American Public Health Association. "Control of Communicable Diseases Manual". 1[7]8th ed., [Chia]Heymann, [James]David L., editor, 200[0]4.

(2) Centers for Disease Control and Prevention. Recommendation of the Immunization Practices Advisory Committee (ACIP): Human rabies Prevention - United States, 1999. "Morbidity and Mortality Weekly Report." 1999; 48: RR-1, 1-21.

(3) The National Association of State Public Health Veterinarians, Inc., "Compendium of Animal Rabies Prevention and Control, 200[4]6, Part II."

(4) American Academy of Pediatrics. "Red Book: 2003 Report of the Committee on Infectious Diseases" 26th Edition. Elk Grove Village, IL, American Academy of Pediatrics; 2003.

KEY: communicable diseases, rules and procedures
Date of Enactment or Last Substantive Amendment: [~~October 14, 2005~~2007]
Notice of Continuation: August 20, 2002
Authorizing, and Implemented or Interpreted Law: 26-1-30; 26-6-3; 26-23b



Health, Epidemiology and Laboratory Services, Environmental Services

R392-302

Design, Construction and Operation of Public Pools

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 29717
 FILED: 03/22/2007, 09:54

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is necessary to update the rule to meet industry trends and to clarify the language of the rule.

SUMMARY OF THE RULE OR CHANGE: Requirements for hydrotherapy pools are clarified by an expanded definition and citing specific applicable sections and exemptions. The exemption to require construction changes of existing pools that do not meet the proposed rule is changed from pool facilities constructed prior to 09/16/1996 to requiring pools to comply with the rule in effect at the time the facility was installed. Exemption to the prohibition of vinyl liners in specialty therapy pools is deleted. The depth requirement is changed from a minimum of 9 feet of water in areas where diving is permitted from a height of 1 meter or less to the depth requirements of Sections 6, Figure 1 and Table 2, of ANSI/NSPI-1, 2003 (that section is adopted by reference). The allowance of "shallower" water for diving from a competitive starting platform is changed to a requirement for at least four feet of water and that the platforms be removed or made unavailable for swimmers not involved in competition or practice for competition. The allowance of the use of the international no diving icon is added as an alternative to the requirement for posting of "No Diving" warnings on pool decks. A requirement is added for a written "No Diving" sign somewhere in the enclosure when no diving icons are used. The distance allowed for no diving warnings from the pool edge is changed from a maximum of 16 inches to as close as practical. The determination of pool depth is changed from, "the bottom of the pool to the deck or walk" to the bottom of the pool to the normal operating level of the pool water. The sections on inlets and outlet are reorganized for clarity and anti-entrapment drain covers are allowed. The minimum distance between main drains is changed from 8 feet to 4 feet. The options to retrofit existing pools that do not meet anti-entrapments standards are expanded to allow modification of existing drains as well as the installation of vacuum switches. The requirement for grates and covers to meet ASME/ANSI standards is added. A provision for a skimmer equalizer outlet in the floor of shallow pools is added. The requirement for a connection of a wading pool overflow system to a main drain is deleted for safety reasons. A source of confusion from a discrepancy in the number of lifeguard that are required in the rule text and a table is clarified. The body of the rule no longer contains the requirement for the number of lifeguard chairs but refers to the table which contains the requirement. The special provision that exempts small lap pools and other types of pools used for medically supervised therapy activities is moved and clarified. The revocation of a certificate of a pool operator by a local health department is changed to allow a local health department to cause that the pool operator's certification is not recognized in the state until the individual obtains a new certification. An allowance is added for pools that utilize oxidation reduction potential technology to reduce testing for disinfectant levels from four times a day to once a day.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-15-2

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: American National Standards Institute (ANSI), American National Standards for Swimming Pools ANSI/NSPI-1 2003; National Sanitation Foundation (NSF) International Standard, American National Standards Institute (ANSI) NSF/ANSI 50-2004; USA Diving Rules and Regulations 2004 Appendix B American Society of Mechanical Engineers (ASME), American National Standards Institute (ANSI) ASME/ANSI A112.19.8M-1996; American Society for Testing and Materials (ASTM) Standard Provisional Specification for Manufactured Safety Vacuum Release Systems (SVRS) for Swimming Pools, Spas, and Hot Tubs. PS 10-03 American Society of Mechanical Engineers (ASME) Manufactured Safety Vacuum Release Systems for Residential and Commercial Pools, ASME A112.19.17 - 2002; American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) ANSI/ASHRAE Standard 62.1-2004

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no impact on the state budget as the local health departments are charged with the responsibility of inspecting swimming pools.

❖ LOCAL GOVERNMENTS: Changes to the rule will have no cost impact on local health department inspections as the amendments do not increase the inspection time or effort. To meet the minimum depth requirement driven by swimming competition ruling bodies and change of this rule, some existing starting platform anchors at pools with depths of less than 4 feet would have to be removed. No more than five government pools will be affected. The cost is estimated to be \$250 per platform which would be \$2,000 per pool or no more than \$10,000 statewide. An estimated \$20 per day cost savings is anticipated for those pools using Oxygen Reduction Potential technology, as the requirement to sample is reduced from four times per day, to once per day. This would result in a cost savings of approximately \$1,200 per day statewide for pools owned by local governments. The change in the number of lifeguard stations will be negligible, but overall will not increase costs as the number of chairs required will be reduced.

❖ OTHER PERSONS: Only a small percentage of pools owned by nongovernmental persons have starting platforms installed. To meet the minimum depth requirement driven by swimming competition ruling bodies, some existing starting platforms at pools with depths of less than 4 feet would have to be removed. There are no known nongovernment pools that would be affected by this change. If there are any, individual pools would be required to spend approximately \$2,000 per pool. An estimated \$20/day cost savings is anticipated for those pools using Oxygen Reduction Potential technology, as the requirement to sample is reduced from four times per day to once per day. This would result in a cost savings of approximately \$6,800 per day for nongovernment-owned pools statewide. The change in the number of lifeguard stations will be negligible, but overall will not increase costs as the number of chairs required will be reduced.

COMPLIANCE COSTS FOR AFFECTED PERSONS: To meet the minimum depth requirement driven by industry standards, which would require removal of existing platforms if the pool is

not 4 feet deep, individual pools would be required to spend approximately \$2,000 per pool.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule has been reviewed by senior staff and it appears the process for evaluating the proposed changes has been inclusive of interested stakeholders. Fiscal impact should be minor, but public comments will be very helpful in guiding this analysis. David N. Sundwall, MD, Executive Director

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

HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES,
ENVIRONMENTAL SERVICES
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:

Ronald Marsden at the above address, by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2007

AUTHORIZED BY: David N. Sundwall, Executive Director

R392. Health, Epidemiology and Laboratory Services, Environmental Services.

R392-302. Design, Construction and Operation of Public Pools.

R392-302-2. Definitions.

The following definitions apply in this rule.

(1) "Bather Area" means any area normally occupied by bathers as they participate in bathing activities. Bather areas include pools, decks, slides, and dressing rooms.

(2) "Bather Load" means the number of persons using a pool at any one time or specified period of time.

(3) "Department" means the Utah Department of Health.

(4) "Diver area" means the area of a pool that is designed, operated, and reserved around each diving board or platform.

(5) "Executive Director" means the Executive Director of the Utah Department of Health, or his designated representative.

(6) "Facility" means any premises, building, pool, equipment, system, and appurtenance which appertains to the operation of a public pool.

(7) "Float Tank or Relaxation Tank" means a tank containing skin-temperature salt water that is designed to provide for solitary body floatation upon or within the water.

(8) "High Bather Load" means 90% or greater of the designed maximum bather load."

(9) "Hydrotherapy Pool" means a pool designed primarily for medically prescribed therapeutic use.

(10) "Illuminance Uniformity" means the ratio between the brightest illuminance falling on a surface compared to the lowest illuminance falling on a surface within an area. The value of illuminance falling on a surface is measured in foot candles.

(11) "Lamp Lumens" means the quantity of light, illuminance, produced by a lamp.

(12) "Lifeguard" means an attendant who supervises the safety of bathers.

(13) "Living Unit" means one or more rooms or spaces that are, or can be, occupied by an individual, group of individuals, or a family, temporarily or permanently for residential or overnight lodging purposes. Living units include motel and hotel rooms, condominium units, travel trailers, recreational vehicles, mobile homes, single family homes, and individual units in a multiple unit housing complex.

(14) "Local Health Officer" means the health officer of the local health department having jurisdiction, or his designated representative.

(15) "Non-swimmer area" means each area of a pool with water ~~[five]~~ 5 feet, 1.52 meters, or less in depth.

(16) "Pool" means a man-made basin, chamber, receptacle, tank, or tub which, when filled with water, creates an artificial body of water used for swimming, bathing, diving, recreational and therapeutic uses.

(17) "Pool Deck" means the area contiguous to the outside of the pool curb, diving boards, diving towers and slides.

(18) "Private Residential ~~[Swimming—]~~Pool" means a swimming pool, spa pool or wading pool used only by an individual, family, or living unit members and guests, but not serving any type of multiple unit housing complex of four or more living units.

(19) "Public Pool" means a swimming pool, spa pool, wading pool, or special purpose pool facility which is not a private residential pool."

(20) "Saturation Index" means a value determined by application of the formula for calculating the saturation index in Table 5, which is based on interrelation of temperature, calcium hardness, total alkalinity and pH which indicates if the pool water is corrosive, scale forming or neutral.

(21) "Spa Pool" means a pool which uses ~~[hydro]~~therapy jet circulation, hot water, cold water, bubbles produced by air induction, or any combination of these, to impart a massaging effect upon a bather. Spa pools include, spas, whirlpools, hot tubs, or hot spas.

(22) "Special Purpose Pool" means a pool with design and operational features that provide patrons recreational, instructional, or therapeutic activities which are different from that associated with a pool used primarily for swimming, diving, or spa bathing.

(23) "Splash Pool" means the area of water located at the terminus of a water slide or vehicle slide.

(24) "Swimmer area" means each area of a pool with water over ~~[five]~~ 5 feet, 1.52 meters, in depth, which is not designed, operated, or reserved as a diver area.

(25) "Swimming Pool" means a pool used primarily for recreational, sporting, or instructional purposes in bathing, swimming, or diving activities.

(26) "Surge Tank" means a tank receiving the gravity flow from an overflow gutter and main drain or drains from which the circulation pump takes water which is returned to the system.

(27) "Turnover" means the circulation of a quantity of water equal to the pool volume through the filter and treatment facilities.

(28) "Vehicle Slide" means a recreational pool where bathers ride vehicles, toboggans, sleds, etc., down a slide to descend into a splash pool.

(29) "Wading Pool" means any pool or pool area used or designed to be used by children five years of age or younger for wading or water play activities.

(30) "Water play activity" means play associated with or facilitated by playground type equipment or recreational features and incorporates water as part of its designed function. Water play does not include swimming, diving, waterslides as described in R392-302-31, or organized sports, or instruction of these activities.

(31) "Water Slide" means a recreational facility consisting of flumes upon which bathers descend into a splash pool.

R392-302-3. General Requirements.

This rule does not require a construction change in any portion of a public pool facility if the [facilities were]facility was installed and in compliance with law in effect [prior to September 16, 1996]at the time the facility was installed, except as specifically provided otherwise in this rule. However if the Executive Director or the Local Health Officer determines that any facility is dangerous, unsafe, unsanitary, or a nuisance or menace to life, health or property, the Executive Director or the Local Health Officer may order construction changes consistent with the requirements of this rule to existing facilities.

R392-302-6. Construction Materials.

(1) Each public pool and the appurtenances necessary for ~~its~~its proper function and operation must be constructed of materials which are inert, non-toxic to humans, impervious, enduring over time, and resists the affects of wear and deterioration from chemical, physical, radiological, and mechanical actions.

(2) Construction of a public pool must withstand the stresses associated with the normal uses for which the public pool was designed.

(3) Each pool shell must be bonded to the supporting members.

(4) Each pool shell must be designed and constructed in a manner that provides a smooth, easily cleanable surface.

(5) Except for spa pools, the pool shell surface must be of a white or light pastel color.

(6) Sand, clay, or earth bottoms are prohibited.

(7) Vinyl or other flexible liners are prohibited ~~[with the exception of a specialty therapy pool meeting the following conditions:~~

~~—(a) The specialty therapy pool shall comply with all other requirements of R392-302-~~

~~—(b) Coatings must be slip resistant.~~

~~—(c) The pool is limited to use by patients receiving medically prescribed treatment.~~

~~—(d) The pool is located in an indoor clinical setting.~~

~~—(e) Patients shall be under the constant and direct supervision of a licensed professional therapist.~~

~~—(f) The liner shall be made of heavy duty, non-slip, webbing reinforced PVC of at least 60 mils in thickness.~~

~~—(g) The pool is approved as a Class II Medical Device by the U.S. Food and Drug Administration].~~

(8) The pool shell surface coatings and textures, including flexible coating materials of at least 60 mils in thickness, may be used if they are bonded to a pool shell that is constructed as provided in Subsections R392-302-6(1), (2) and (3).

(a) The coatings must provide a smooth surface that is easily cleanable.

(b) The coatings must be slip resistant.

(9) The pool shell surfaces must be free of cracks or open joints with the exception of structural expansion joints.

(10) A ~~spa or other~~ pool shell constructed of materials other than concrete must:

(a) be listed by the International Association of Plumbing and Mechanical Officials (IAPMO) and the spa or other pool basin or tub shall bear the IAPMO logo; or

(b) meet construction and material standards that are equivalent to IAPMO's.

R392-302-7. Bather Load.

(1) The bather load capacity for each area of a public pool is determined as follows:

(a) Ten square feet, 0.929 square meters, of pool water surface area must be provided for each bather in a non-swimmer area during maximum load.

(b) Twenty-four square feet, 2.23 square meters, of pool water surface area must be provided for each bather in a swimmer area during maximum load.

(c) Three hundred square feet, 27.87 square meters, of pool water surface area must be reserved for each diving area. This area may not be included in computing swimmer and non-swimmer areas.

(d) A design limit of nine persons is allowed for each diving area.

(2) The department may make additional allowance for bathers when the facility operator can demonstrate that lounging and sunbathing patrons will not adversely affect water quality due to over-loading of the pool.

R392-302-8. Design Detail and Structural Stability.

(1) The designing architect or engineer is responsible to certify the design for structural stability and safety of the public pool.

(2) The shape of a pool and design and location of appurtenances must be such that the circulation of pool water and control of swimmer's safety are not impaired. The designing architect or engineer shall designate sidewalls and endwalls on pool plans. The pool design shall separate wading pools from other pools. Wading pools may not share common circulation, filtration, or chemical treatment systems, or walls.

(3) A pool must have a circulation system with necessary treatment and filtration equipment as required in R392-302-16, unless turnover rate requirements as specified in sub-section R392-302-16(1) can be met by continuous introduction of fresh water and wasting of pool water under conditions satisfying all other requirements of this rule.

(4) Where a facility is subject to freezing temperatures, all parts of the facility subject to freezing damage must be adequately and properly protected from damage due to freezing, including the pool, piping, filter system, pump, motor, and other components and systems.

(5) The pool operator or the designing architect or engineer shall submit plans for a new pool, pool renovation or pool remodeling project to the local health department for approval. This includes the replacement of equipment which is different from that originally approved by a health authority having jurisdiction. The local health department may require a pool renovation or pool remodeling project to meet the current requirements of R392-302.

R392-302-9. Depths and Floor Slopes.

(1) In determining the horizontal slope ratio of a pool floor, the first number shall indicate the vertical change in value or rise and the second number shall indicate the horizontal change in value or run of the slope.

(a) The horizontal slope of the floor of any portion of a pool having a water depth of less than ~~five~~ 5 feet, 1.52 meters, may not be steeper than a ratio of 1 to 10.

(b) The horizontal slope of the floor of any portion of a pool having a water depth greater than ~~five~~ 5 feet, 1.52 meters, must be uniform, must allow complete drainage and may not exceed a ratio of 1 to 3. The horizontal slope of the pool bottom in diving areas must be consistent with the requirements for minimum water depths as specified in Section R392-302-11 for diving areas.

(2) A wading pool may not exceed a maximum water depth of ~~two~~ 2 feet, 60.96 ~~cm~~ centimeters.

(3) A spa pool may not exceed a maximum water depth of ~~four~~ 4 feet, 1.22 meters. The department may grant exceptions for a spa pool designed for special purposes, such as instruction, treatment, or therapy.

R392-302-10. Walls.

(1) Pool walls must be vertical or within 11 degrees of vertical for a minimum distance of ~~29~~ 2 feet 9 inches, 83.82 ~~cm~~ centimeters, below the water line in areas with a depth of ~~five~~ 5 feet, 1.52 meters, or greater. Pool walls must be vertical or within 11 degrees of vertical for a minimum distance equal to or greater than one half the pool depth as measured from the water line.

(2) Where walls form an arc to join the floors, the transitional arc from wall to floor must:

(a) Have its center no less than ~~29~~ 2 feet 9 inches, 83.82 ~~cm~~ centimeters, below the normal water level in areas with a depth greater than ~~five~~ 5 feet, 1.52 meters.

(b) Have its center no less than 75% of the pool depth beneath the normal water level, in areas of the pool with a depth of ~~five~~ 5 feet, 1.52 meters, or less.

(c) Be tangent to the wall.

(d) Have a radius at least equal to or greater than the depth of the pool minus the vertical wall depth measured from the water line, as described in Subsection R392-302-9(1), minus 3 inches, 7.62 ~~cm~~ centimeters, to allow draining to the main drain. Radius minimum = Pool Depth - Vertical wall depth - 3 inches, 7.62 ~~cm~~ centimeters, where the water depth is greater than ~~five~~ 5 feet, 1.52 meters.

(e) Have a radius which may not exceed a length greater than 25% of the water depth, in areas with a water depth of ~~five~~ 5 feet, 1.52 meters, or less.

(3) Underwater ledges are prohibited.

R392-302-11. Diving Areas.

(1) Where diving is permitted, the ~~(D)~~ diving area design, equipment placement, and clearances must meet the minimum standards established by the ~~(U.S.)~~ USA Diving Rules and Regulations ~~[2000-2004]~~ 2004, Appendix B, which are incorporated by reference.

(2) Where diving from a height of less than 3.28 feet, 1 meter, from normal water level is permitted, the ~~minimum depth of water in the diving well shall be 9.0 feet, 2.74 meters~~ diving bowl shall meet the minimum depths outlined in Section 6, Figure 1 and Table 2 of ANSI/NSPI-1, 2003, which is adopted by reference, for type VI, VII and VIII pools according to the height of the diving board above

the normal water level. ANSI/NSPI pool type VI is a maximum of 26 inches, 2/3 meter, above the normal water level; type VII is a maximum of 30 inches, 3/4 meter, above the normal water level; and type VIII is a maximum of 39.37 inches, 1 meter, above the normal water level.

~~(a)(3) [When diving from starting platforms for competitive swimming events or for training for competitive swimming events, the water may be shallower] The use of a starting platform is restricted to competitive swimming events or supervised training for competitive swimming events.~~

~~(a) If starting platforms are used for competitive swimming or training, the water depth shall be at least four feet.~~

~~(b) The operator shall either remove the starting platforms or secure them with a lockable cone-type platform safety cover when not in competitive use.~~

~~(3)4 Areas of a pool where ~~no~~ diving is not permitted must have "NO DIVING" or the international no diving icon, or both ~~printed~~ provided in block letters at least ~~4~~ four inches in height in a contrasting color on the deck, ~~no further than 16 inches from the edge of the pool, and spaced not more than 25 feet apart~~ located on the horizontal surface of the deck or coping as close to the water's edge as practical.~~

~~(4) Diving boards or platforms must be parallel to each other and located on the same side of the pool, unless the department determines that divers will not pose hazards to each other while diving into or exiting from the pool.~~

~~(a) Where the "NO DIVING" warnings are used, the spacing between each warning may be no greater than 25 feet.~~

~~(b) Where the icon alone is used on the deck as required, the operator shall also post at least one "NO DIVING" sign in plain view within the enclosure. Letters shall be at least four inches in height with a stroke width of at least one-half inch.~~

R392-302-12. Ladders, Recessed Steps, and Stairs.

(1) In areas of a pool where the water depth is greater than ~~two~~ 2 feet, 60.96 ~~cm~~ centimeters, and less than ~~five~~ 5 feet, 1.52 meters, as measured vertically from the bottom of the pool to the ~~deck or walk~~ mean operating level of the pool water, steps or ladders must be provided, and be located in the area of shallowest depth.

(2) In areas of the pool where the water depth is greater than ~~five~~ 5 feet, 1.52 meters, as measured vertically from the bottom of the pool to the ~~deck or walk~~ mean operating level of the pool water, ladders or recessed steps must be provided.

(3) A pool over 30 feet, 9.14 meters, wide must be equipped with steps, recessed steps, or ladders as applicable, installed on each end of both side walls.

(4) A pool over 30 feet, 9.14 meters, wide and 75 feet, 22.8 meters, or greater in length, must have ladders or recessed steps midway on both side walls of the pool, or must have ladders or recessed steps spaced at equal distances from each other along both sides of the pool at distances not to exceed 30 feet, 9.14 meters, in swimming and diving areas, and 50 feet, 15.23 meters, in non-swimming areas.

(5) Ladders or recessed steps must be located within 15 feet, 4.56 meters, of the diving area end wall.

(6) The steps, recessed steps, and ladders, must have one or more handrails.

(a) Handrails must be rigidly installed and constructed in such a way that they can only be removed with tools.

(b) Handrails must be constructed of corrosion resistant materials.

(c) The outside diameter of handrails may not exceed ~~2~~ 2 inches, 5.08 ~~cm~~ centimeters.

(d) Submerged steps or rungs which are not recessed must be guarded by handrails. The hand rail must be mounted on the deck and extend to the bottom step.

(7) Steps must be constructed of corrosion-resistant material, be easily cleanable, and be of a safe design.

(a) Steps leading into pools must be of non-slip design, have a minimum run of 10 inches, 25.4 ~~cm~~ centimeters, and a maximum rise of 12 inches, 30.48 ~~cm~~ centimeters.

(b) Steps must have a line at least ~~one~~ 1 inch, 2.54 ~~cm~~ centimeters, in width, and be of a contrasting dark color for maximum visual distinction within ~~two~~ 2 inches, 5.08 ~~cm~~ centimeters, of the leading edge of each step.

(c) Steps must have a minimum width of 18 inches, 45.72 ~~cm~~ centimeters, as measured at the leading edge of the step.

(d) In a spa pool where the bottom step serves as a bench or seat, the bottom riser must be a maximum of 14 inches, 35.56 ~~cm~~ centimeters.

(8) Pool ladders must meet the following requirements:

(a) Pool ladders must be corrosion-resistant and must be equipped with non-slip rungs.

(b) All ladders must be designed to provide a handhold and must be rigidly installed.

(c) There must be a clearance of not more than ~~five~~ 5 inches, 12.7 ~~cm~~ centimeters, nor less than ~~three~~ 3 inches, 7.62 ~~cm~~ centimeters, between any ladder rung and the pool wall.

(9) Full or partial recessed steps must meet the following requirements:

(a) Where full or partial recessed steps are used, a set of handrails must be located at the top of the course with a rail on each side. The handrails must extend over the coping or edge of the deck.

(b) Full or partial recessed steps must be designed to be readily cleanable and to provide drainage into the pool to prevent the accumulation of dirt on the step.

(c) Full or partial recessed steps must have a minimum run of ~~five~~ 5 inches, 12.7 ~~cm~~ centimeters, and a minimum width of 14 inches, 35.56 ~~cm~~ centimeters.

(10) The designing architect or engineer or the facility owner must anticipate maximum loads on supports, platforms and steps for diving boards, and ensure that supports, platforms, and steps are of substantial construction and of sufficient structural strength to safely carry the maximum anticipated loads.

(a) Handrails must be provided at all steps and ladders leading to diving boards more than 3'3" feet, 1 meter, above the water.

(11) Platforms and diving boards which are over 3'3" feet, 1 meter, high, must be designed to protect divers from falls to the deck or pool curb by the installation of guard railings.

(12) A spa pool must be equipped with at least one handrail for each 50 feet, 15.24 meters, of perimeter, or portion thereof, to designate the point of entry and exit. Points of entry and exit must be evenly spaced around the perimeter of the spa pool and afford unobstructed entry and egress.

R392-302-13. Decks and Walkways.

(1) A continuous, unobstructed deck at least ~~five~~ 5 feet, 1.52 meters, wide as measured from the pool side edge of the coping must extend completely around the pool.

(2) At least ~~five~~ 5 feet, 1.52 meters, of deck area must be provided behind the deck end of any diving board, platform, slide, step, or ladder.

(3) The deck must slope away from the pool to floor drains at a grade of 1/4 inch, 6.35 ~~mm~~ millimeters, to 3/8 inch, 9.53 ~~mm~~ millimeters, per linear foot.

(4) Decks and walkways must be maintained free of standing water and must have non-slip surfaces.

(5) Wooden decks, walks or steps are prohibited.

(a) The department may grant exceptions for deck construction materials for spa pools or other applications where sealed, clear-hard redwood is used.

(6) Deck drains may not return water to the pool or the circulation system.

(7) Decks must be maintained in a sanitary condition and free from litter.

(8) Carpeting may not be installed within ~~five~~ 5 feet, 1.52 meters, of the water side edge of the coping and must be wet vacuumed as often as necessary to keep it clean and free of accumulated water.

(9) Steps serving decks must meet the following requirements:

(a) Risers of steps for the deck must be uniform and have a minimum height of 3-3/4 inches, 9.53 ~~cm~~ centimeters, and a maximum height of 7-3/4 inches, 19.7 ~~cm~~ centimeters.

(b) The minimum run of steps shall be 10 inches, 25.4 ~~cm~~ centimeters.

(c) Steps must have a minimum width of 18 inches, 45.72 ~~cm~~ centimeters.

(10) The deck of a wading pool may be included as part of adjacent pool decks.

(11) A spa deck must meet each of the following requirements:

(a) A spa pool must have a continuous, unobstructed deck at least 3 feet, 91.44 ~~cm~~ centimeters, wide around 25 percent or more of the spa. This width may include the coping.

(b) A pool deck may be included as part of the spa deck if the pools are separated by a minimum of ~~five~~ 5 feet, 1.52 meters. The department may grant an exception to deck and pool separation requirements if a spa pool and another pool are constructed adjacent to each other and share a common pool sidewall which separates the two pools. The common pool side wall may not exceed 12 inches, 30.48 ~~cm~~ centimeters, in width.

R392-302-14. Fencing.

(1) A fence or other barrier is required and must provide complete perimeter security of the facility, and be at least ~~six~~ 6 feet, 1.83 meters, in height. Openings through the fence or barrier, other than entry or exit access, may not permit a sphere greater than 4 inches, 10.16 ~~cm~~ centimeters, to pass through it at any location.

(a) If the local health department determines that the safety of children is not compromised, it may exempt indoor pools from the fencing requirements.

(b) The local health department may grant exceptions to the height requirements in consideration of architectural and landscaping features for pools designed for hotels, motels and apartment houses.

(2) A fence or barrier that has an entrance to the facility must be equipped with a self-closing and self-latching gate or door. Except for self-locking mechanisms, self-latching mechanisms must be at least 54 inches, 1.37 meters, above the ground and must be provided with hardware for locking the gate when the facility is not in use.

(3) Bathing areas must be separated from non-bathing areas by barriers with a minimum height of ~~four~~ 4 feet, 1.22 meters, or by a minimum of 5 feet, 1.53 meters, distance separation.

R392-302-15. Depth Markings and Safety Ropes.

(1) The depth of the water must be plainly marked at locations of maximum and minimum pool depth, and at the points of separation between the swimming and non-swimming areas of a pool. Pools must also be marked at intermediate ~~one~~ 1 foot, 30.48 ~~cm~~ centimeters, increments of depth, spaced at distances which do not exceed 25 feet, 7.62 meters. Markings must be located above the water line or within ~~two~~ 2 inches, 5.8 ~~cm~~ centimeters, from the coping on the vertical wall of the pool and on the edge of the deck or walk next to the pool with numerals at least ~~four~~ 4 inches, 10.16 ~~cm~~ centimeters, high.

(2) A pool with both swimming and diving areas must have a floating safety rope separating the swimming and diving areas. An exception to this requirement is made for special activities, such as swimming contests or training exercises when the full unobstructed length of the pool is used.

(a) The safety rope must be securely fastened to wall anchors. Wall anchors must be of corrosion-resistant materials and must be recessed or have no projections that may be a safety hazard if the safety rope is removed.

(b) The safety rope must be marked with visible floats spaced at intervals of ~~seven~~ 7 feet, 2.13 meters or less.

(c) The rope must be at least ~~one half of an inch~~ 0.5 inches, 1.27 ~~cm~~ centimeters, in diameter, and of sufficient strength to support the loads imposed on it during normal bathing activities.

(3) A pool constructed with a change in the slope of the pool floor must have the change in slope designated by a floating safety rope and a line of demarcation on the pool floor.

(a) The floating safety rope designating a change in slope of the pool floor must be attached at the locations on the pool wall that place it directly above and parallel to the line on the bottom of the pool. The floating safety rope must meet the requirements of Subsections R392-302-15(2)(a),(b),(c).

(b) A line of demarcation on the pool floor must be marked with a contrasting dark color.

(c) The line must be at least ~~two~~ 2 inches, 5.08 ~~cm~~ centimeters, in width.

(d) The line must be located 12 inches, 30.48 ~~cm~~ centimeters, toward the shallow end from the point of change in slope.

(4) The department may exempt a spa pool from the depth marking requirement if the spa pool owner can successfully demonstrate to the department that bather safety is not compromised by the elimination of the markings.

R392-302-16. Circulation Systems.

(1) A circulation system, consisting of pumps, piping, filters, water conditioning and disinfection equipment and other related equipment must be provided. ~~[A hydrotherapy pool that is drained, cleaned, and sanitized after each use by an individual is exempt from the requirements of R392-302-16.]~~ The normal water line of the pool must be maintained within 9 inches, 22.86 ~~cm~~ centimeters, of the deck whenever the pool is open for bathing. An exemption to this requirement may be granted by the department if it can be demonstrated that the safety of the bathers is not compromised.

(a) Except for spas, wading pools, wave pools, slide pools, vehicle slide pools, and floatation tanks, the circulation system shall clarify and disinfect the entire volume of pool water in eight hours

or less, thus providing a minimum turnover of at least three times in 24 hours.

(b) The turnover rate must be increased to provide a six hour turnover for pools subjected to high bather loads if a review of bacteriological water quality reports by the department or local health department having jurisdiction demonstrates that high bather loads may have contributed to unsatisfactory water samples.

(c) The circulation equipment must be operated continuously except for periods of routine or other necessary maintenance and must be designed to permit complete drainage of the system. Table 1 further describes these requirements.

(d) Piping must be of non-toxic material, resistant to corrosion and be able to withstand operating pressures.

(e) Plumbing must be identified by a color code or labels.

(2) The water velocity in discharge piping may not exceed 10 feet, 3.05 meters, per second, except for copper pipe where the velocity for piping may not exceed 8 feet, 2.44 meters, per second.

(3) Suction velocity for all piping may not exceed 6 feet, 1.83 meters, per second.

(4) The circulation system must include a strainer to prevent hair, lint, etc., from reaching the pump.

(a) Strainers must be corrosion-resistant with openings not more than ~~[one-eighth]~~ 1/8 inch, 3.18 ~~[mm]~~ millimeters, in size.

(b) Strainers must provide a free flow capacity of at least four times the area of the pump suction line.

(c) Strainers must be readily accessible for frequent cleaning.

(d) Strainers must be maintained in a clean and sanitary condition.

(e) Each pump strainer must be provided with necessary valves to facilitate cleaning of the system without excessive flooding.

(5) A vacuum-cleaning system must be provided.

(a) If this system is an integral part of the circulation system, connections must be located in the walls of the pool, at least ~~[eight]~~ 8 inches, 20.32 ~~[cm]~~ centimeters, below the water line. This requirement does not apply to vacuums operated from skimmers.

(b) The number of connections provided must facilitate access to all areas of the pool through hoses less than 50 feet, 15.24 meters, in length.

(6) A rate-of-flow indicator, reading in gallons per minute, must be properly installed and located according to manufacturer recommendations. The indicator must be located in a place and position where it can be easily read.

(7) Pumps must be of adequate capacity to provide the required number of turnovers of pool water as specified in Subsection R392-302-16, Table 1. The pump or pumps must be capable of providing flow adequate for the backwashing of filters. Under normal conditions, the pump or pumps must supply the circulation rate of flow at a dynamic head which includes, in addition to the usual equipment, fitting and friction losses, an additional loss of 15 feet, 4.57 meters, for rapid sand filters, vacuum diatomite filters or vacuum cartridge filters and 40 feet, 12.19 meters, for pressure diatomite filters, high rate sand filters or cartridge filters, as well as pool inlet orifice loss of 15 feet, 4.57 meters.

(8) A pool equipped with heaters must meet the requirements for boilers and pressure vessels as required by the State of Utah Boiler and Pressure Vessel Rules, R576-201, and must have a fixed thermometer mounted in the pool circulation line downstream from the heater outlet. The heater must be provided with a heatsink as required by manufacturer's instructions.

(9) The area housing the circulation equipment must be designed with adequate working space so that all equipment may be easily disassembled, removed, and replaced for proper maintenance.

(10) All circulation lines to and from the pool must be regulated with valves in order to control the circulation flow.

(a) All valves must be located where they will be readily and easily accessible for maintenance and removal.

(b) Multiport valves must comply with National Sanitation Foundation ~~[50-1992]~~ NSF/ANSI 50-2004, which is incorporated and adopted by reference.

(11) Written operational instructions must be immediately available at the facility at all times.

(12) A wading pool must have a minimum of one turnover per hour and have a separate circulation system.

(13) A spa pool must have a minimum of one turnover every 30 minutes. The circulation lines of jet systems and other forms of water agitation used in spa and therapy pool must be independent and separate from the circulation-filtration and heating systems.

(14) Float tank circulation systems, consisting of pumps, piping, filters, and disinfection equipment must be provided which will clarify and disinfect the tank's volume of water in 15 minutes or less. The total volume of water within a float tank must be turned over at least twice between uses by patrons.

(15) Wave pool circulation-filtration systems must be operated at a minimum of one turnover every six hours.

(16) Slide and vehicle slide pools must be operated at a minimum of one turnover every hour.

TABLE 1
Circulation

Type of Pool	Minimum Number of Inlets	Minimum Number of Skimmers	Minimum Turnover Time
		3,500 ft ² or less	
1. Swim	1/10 ft., 3.05 m	1/500 ft ² , 46.45 m ²	Eight hours
2. Swim, high bather load	1/10 ft., 3.05 m	1/500 ft ² , 46.45 m ²	Six hours
3. Wading pool	1/20 ft., 6.10 m, minimum of two equally spaced	See Section R392 302 19	One hour
4. Spa	1/20 ft., 6.10 m	1/100 ft ² , 9.29 m ²	30 min.
5. Wave	See Section R392 302 16	See Section R392 302 19	Six hours
6. Slide	See Section R392 302 16	See Section R392 302 19	One hour
7. Vehicle slide	See Section 16.0	See Section R392 302 19	One hour
8. Float tank	One	One	15 minutes with two turnovers between patrons
9. Special Purpose Pool	One	See Subsection R392 302 19	One hour
Type of Pool	Minimum Number of Wall Inlets	Minimum Number of Skimmers per 3,500 square feet or less	Minimum Turnover Time
1. Swim	1 per 10 feet, 3.05 meters	1 per 500 sq. ft., 46.45 sq. meters.	8 hours

2. Swim,	1 per	1 per	6 hours
high bather	10 feet,	500 sq. ft.,	
load	3.05 meters	46.45 sq. meters	
3. Wading pool	1 per 20 feet,	1 per	1 hour
	6.10 meters,	500 sq. ft.,	
	minimum of 2	46.45 sq. meters	
	equally spaced		
4. Spa	One per	1 per	30 minutes
	20 feet,	100 sq. ft.,	
	6.10 meters	9.29 sq. meters	
5. Wave	1 per	1 per	6 hours
	10 feet,	500 sq. ft.,	
	3.05 meters	46.45 sq. meters	
6. Slide	1 per	1 per	1 hour
	10 feet,	500 sq. ft.,	
	3.05 meters	46.45 sq. meters	
7. Vehicle	1 per	1 per	1 hour
slide	10 feet,	500 sq. ft.,	
	3.05 meters	46.45 sq. meters	
8. Float tank	1	1	15 minutes
			with 2
			turnovers
			between
			patrons
9. Special	1 per	1 per	1 hour
Purpose	10 feet,	500 sq. ft.,	
Pool	3.05 meters	46.45 sq. meters	

(17) Each air induction system installed must comply with the following requirements:

(a) An air induction system must be designed and maintained to prevent any possibility of water back-up that could cause electrical shock hazards.

(b) An air intake may not introduce contaminants such as noxious chemicals, fumes, deck water, dirt, etc. into the pool.

R392-302-17. Inlets.

(1) Inlets for fresh or treated water must be located to produce uniform circulation of water and to facilitate the maintenance of a uniform disinfectant residual throughout the entire pool. ~~Inlets from the circulation system must be flush with the pool wall and submerged at least five feet, 1.52 meters, below the water level, or at the bottom of the vertical wall surface.~~

~~(a) The department may grant an exemption to the inlet placement requirements on a case by case basis for inlet designs that can be demonstrated to produce uniform mixing of pool water.]~~

(2) If wall inlets from the circulation system are used, they must be flush with the pool wall and submerged at least 5 feet, 1.52 meters, below the normal water level or at the bottom of the vertical wall surface tangent to the arc forming the transition between the vertical wall and the floor of the pool. Except as provided in Subsections R392-302-17(4) and (5), wall inlets must be placed every 10 feet, 3.05 meters, around the pool perimeter. [Modification of the 10 foot, 3.05 meters, separation will be acceptable for small pools if uniform circulation of filtered water can be demonstrated to the department.]

(a) The department or the local health [department] officer may require floor inlets to be installed in addition to [the perimeter] wall inlets [required,] if a pool has a width greater than 50 feet, 4.57 meters, to assure thorough chemical distribution. If floor inlets are

installed in addition to wall inlets, there must be a minimum of one row of floor inlets centered on the pool width. Individual inlets and rows of inlets shall be spaced a maximum of 15 feet, 4.57 meters, from each other. Floor inlets must be at least 15 feet, 4.57 meters, from [the] a pool wall with wall inlets.

(3)b) Each wall inlet must be designed as a non-adjustable orifice with sufficient head loss to insure balancing of flow through all inlets. The return loop piping must be sized to provide less than 2.5 feet, 76.20 [em]centimeters, of head loss to the most distant orifice to insure approximately equal flow through all orifices.

(3) If floor inlets from the circulation system are used, they must be flush with the floor. Floor inlets shall be placed at maximum 15 foot, 4.46 meter, intervals. The distance from floor inlets to a pool wall shall not exceed 7.5 feet, 2.29 meters if there are no wall inlets on that wall. Each floor inlet must be designed such that the flow can be adjusted to provide sufficient head loss to insure balancing of flow through all inlets. All floor inlets must be designed such that the flow cannot be adjusted without the use of a special tool to protect against swimmers being able to adjust the flow. The return supply piping must be sized to provide less than 2.5 feet, 76.20 centimeters, of head loss to the most distant orifice to insure approximately equal flow through all orifices.

(4) A wading pool [must be provided with] that utilizes wall inlets shall have a minimum of two equally spaced inlets around it[']s perimeter at a minimum of one in each 20 feet, 6.10 meters, or fraction thereof.

(a) Each wading pool shall have a minimum of two equally spaced wall inlets located to avoid the creation of a vortex in the pool.

(5) Spa pool filtration system inlets [must be provided for spa type pools] shall be wall-type inlets and the number of inlets shall be based on a minimum of one for each 20 feet, 6.10 meters, or fraction thereof, of pool perimeter.

(6) The department may grant an exemption to the inlet placement requirements on a case by case basis for inlet designs that can be demonstrated to produce uniform mixing of pool water.

R392-302-18. Outlets.

(1) Each pool ~~[constructed after 10/3/2000,] shall have a minimum of either two grated outlets, two anti-entrapment outlets, or [one] two anti-vortex type outlets [which] that meet the following design criteria:~~

~~—(a) Grated outlets:~~

~~—(i) The pool shall have a minimum of two grated outlets with each outlet being separated by at least four feet (1.22 meters) and no more than 30 feet, 9.14 meters, apart to prevent body entrapment.]~~

~~[(ii)](a) Outlets shall have a suitable protective grate or cover securely fastened in such a way that the use of tools [are] is required to remove it. A pool [may] shall not operate with broken, damaged or missing drain grates or covers. Protective grates or covers shall be listed by a nationally recognized testing laboratory in accordance with ASME/ANSI A112.19.8M.~~

~~[(iii)](b) The [designing architect or engineer shall design grated] outlets must be constructed so that if one of the outlets is completely obstructed, the remaining outlet(s) will be capable of handling 100 percent of the [minimum] maximum design circulation flow. [The designing architect or engineer shall ensure that outlet grate openings in the floor of the pool are at least four times the area of discharge pipe or provide sufficient area so the maximum velocity of the water passing through the grate will not exceed 1.5 feet per second.]~~

—(iv) The openings in a grate shall have a minimum width of 0.25 inches and a maximum length of 1.5 inches. A grate opening that is neither square nor rectangular in shape, may not be greater than 0.75 inches measured in any dimension.]

~~[(v)](c) [The designing architect or engineer shall ensure that] All pool outlets [are connected] must connect to pipes of equal diameter.~~

~~[(vi)](d) The [designing architect or engineer shall design the] outlet system [to ensure that no] must not allow any outlet [can] to be cut out of the suction line by a valve or other means.~~

(e) The outlets centered in the deepest area of the pool must permit the pool to be completely and easily emptied.

(f) There must be one main drain outlet for each 30 feet, 9.14 meters, of pool width. To prevent body entrapment, multiple main drain outlets shall not be spaced more than 30 feet, 9.14 meters, apart nor spaced closer than 4 feet, 1.22 meters, apart. The outermost main drain outlets must be located within 15 feet, 4.57 meters, from a side wall.

(g) If an outlet discharge pipe is 8 inches, 20.32 centimeters, or greater in diameter it shall have an additional device that shall prevent the passage of a sphere greater than 6 inches, 15.24 centimeters, in diameter. Such a device shall be designed by the designing architect or engineer and may not alter the required flow design characteristics.

(h) Devices or methods used for draining pools shall prevent overcharging the sanitary sewer.

(i) Multiple pumps may utilize the same outlets only if the outlets are sized to accommodate 100 percent of the total combined design flow from all pumps and only if the flow characteristics of the system meet the requirements of subsection R392-302-18(2)(a) or (3)(a).

(j) No feature or circulation pump shall be connected to less than two outlets unless connected to an anti-entrapment outlet system that the operator demonstrates to the Department as being effective in preventing entrapment.

(2) Grated Outlets.

(a) The designing architect or engineer shall ensure that outlet grate openings in the floor of the pool are at least four times the area of discharge or provide sufficient area so the maximum velocity of the water passing through the grate will not exceed 1.5 feet per second.

(b) The openings in a grate shall have a minimum width of 0.25 inches, 0.635 centimeters, and a maximum length of 1.5 inches, 3.81 centimeters. A grate opening that is neither square nor rectangular in shape, may not be greater than 0.75 inches, 1.905 centimeters, measured in any dimension along the exposed surface of the grate.

~~[(b)](3) Anti-vortex or anti-entrapment drains[;].~~

~~[(i)] The anti-vortex drain shall have an anti-vortex design.~~

~~—(ii) Systems with anti-vortex drains shall have the capacity of taking 100 percent of the designed circulation flow.~~

~~—]The total velocity of water through the open area of an anti-vortex or anti-entrapment drain [may] shall not exceed the manufacturer's recommended maximum velocity or a maximum of three feet per second through the open area of the drain, whichever is more restrictive.~~

~~[(iii) Where multiple anti-vortex drains are used, they shall be separated by at least four feet (1.22 meters) but not greater than thirty feet.~~

~~—(iv) Outlets shall have a suitable protective grate securely fastened in such a way that the use of tools are required to remove it.~~

A pool may not be operated with broken, damaged or missing drain covers.

~~—(2) The designing architect or engineer shall locate outlets centered in the deepest area of the pool to permit the pool to be completely and easily emptied.~~

~~—(3) The designing architect or engineer shall provide one main drain outlet for each 30 feet, 9.14 meters, of pool width. Multiple main drain outlets may not be spaced more than 30 feet, 9.14 meters, apart nor spaced closer than eight feet, 2.44 meters, apart. The designing architect or engineer shall locate the outermost main drain outlets within 15 feet, 4.57 meters, from side walls.~~

~~—(4) If an outlet discharge pipe is eight inches, 20.32 cm, or greater in diameter it shall have an additional device that shall prevent the passage of an object greater than six inches, 15.24 cm, in diameter. Such a device may not alter the required flow design characteristics.~~

~~—(5) Devices or methods used for draining pools shall prevent overcharging the sanitary sewer.~~

~~—(6) The pool owner or Certified Pool Operator shall retrofit each swimming pool pump on existing pools that do not meet the current requirements of R392-302-18 with a vacuum switch on the suction side of the pump to prevent entrapment. The CPO shall inspect and test the vacuum switch at least once a week or on a frequency established by the manufacturer to ensure proper operation. The CPO shall test the switch in the manner specified by the manufacturer. The CPO shall log the results of each inspection and test and retain them for a minimum of two years. The CPO shall make records of inspections, tests, and maintenance available for review by the department or local health department upon request.~~

~~—(7)](4) Spa pool outlets shall meet all of the requirements of subsections R392-302-18(1)[+(6);] through R392-302-18(3); however, the following exceptions apply[;].~~

~~[(a) The designing architect or engineer shall design a spa to ensure that each separate pumping system in the spa provides for either;~~

~~—(i) Two or more grated outlets whose pipe diameter sizes are equal. The designing architect or engineer shall ensure that system design ensures that no outlet can be cut out of the suction line by a valve or other means. Multiple pumps may utilize the same outlets, provided the outlets are sized to accommodate 100 percent of the total combined designed flow from all pumps and that the flow characteristics of the system meet the requirements of subsection R392-302-18(1)(a)(iii).~~

~~—(ii) Multiple pumps may share anti-vortex drains if the drains are sized to accommodate 100 percent of the total combined designed flow from multiple pumps and the flow characteristics of the system meet the requirements of subsection R392-302-18(1)(b)(iii).~~

~~—(b)](a) The designing architect or engineer shall [space] ensure multiple spa outlets are spaced at least three feet apart from each other or that a third drain is provided and that the separation distance between individual outlets is at the maximum possible spacing.~~

~~[(e)](b) The department may exempt an acrylic or fiberglass spa from the requirement to locate outlets at the deepest point in the pool, if the outlets are located on side walls within three inches of the pool floor, and a wet-vacuum is available on site to remove any water left in the pool after draining.~~

~~[(8)](5) A wading pool shall have drainage to waste through a quick opening valve to facilitate emptying the wading pool should accidental bowel discharge or other contamination occur.~~

(6) Subsections R392-302-18(6) through R392-302-18(6)(c) supersede section R392-302-3. The pool owner or certified pool operator shall retrofit each swimming pool circulation system on existing pools that do not meet the requirements of subsections R392-302-18(1) through R392-302-18(5) by any of the following means:

(a) A vacuum switch that meets both the American Society for Testing and Materials Standard Provisional Specification for Manufactured Safety Vacuum Release Systems (SVRS) for Swimming Pools, Spas, and Hot Tubs, PS 10-03, and the requirements of American Society of Mechanical Engineers Manufactured Safety Vacuum Release Systems for Residential and Commercial Pools, ASME A112.19.17 - 2002, which are incorporated by reference, installed on the suction side of the pump to prevent outlet entrapment. To ensure proper operation, the certified pool operator shall inspect and test the vacuum switch at least once a week but no less often than established by the manufacturer. The certified pool operator shall test the switch in a manner specified by the manufacturer. The certified pool operator shall log all inspections, tests and maintenance and retain the records for a minimum of two years for review by the Department and local health department upon request.

(b) An outlet system that includes no fewer than two suction outlets separated by no less than 4 feet, 1.22 meters, on the horizontal plane or located on two different planes and connected to pipes of equal diameter. The suction outlets shall be plumbed so water is drawn simultaneously without valves through the outlets to a common line to the pump system; or

(c) Any other system that the operator demonstrates to the Department to prevent outlet entrapment.

R392-302-19. Overflow Gutters and Skimming Devices.

(1) A pool having a surface area of over 3,500 square feet, 325.15 square meters, must have overflow gutters. A pool having a surface area less than 3,500 square feet, 325.15 square meters, must have either overflow gutters or skimmers provided.

(2) Overflow gutters must extend completely around the pool, except at steps, ramps, or recessed ladders. The gutter system must be capable of continuously removing pool water at 100 percent of the maximum flow rate. This system must be connected to the circulation system by means of a surge tank.

(3) Overflow gutters must be designed and constructed in compliance with the following requirements:

(a) The opening into the gutter beneath the coping must be at least ~~three~~3 inches, 7.62 ~~em~~centimeters, in height with a depth of at least ~~three~~3 inches, 7.62 ~~em~~centimeters.

(b) Gutters must be designed to prevent entrapment of any part of a bather's body.

(c) The edge must be rounded so it can be used as a handhold and must be no thicker than 2.5 inches, 6.35 ~~em~~centimeters, for the top ~~two~~2 inches, 5.08 ~~em~~centimeters.

(d) Gutter outlet pipes must be at least ~~two~~2 inches, 5.08 ~~em~~centimeters, in diameter. The outlet grates must have clear openings and be equal to at least one and one-half times the cross sectional area of the outlet pipe.

(4) Skimmers complying with National Sanitation Foundation ~~[NSF 50-1992]~~NSF/ANSI 50-2004 standards or equivalent are permitted on any pool with not more than 3,500 square feet, 325.15 square meters, of surface area. At least one skimming device must be provided for each 500 square feet, 46.45 square meters, of water surface area or fraction thereof. Where two or more skimmers are

required, they must be spaced to provide an effective skimming action over the entire surface of the pool.

(5) Skimming devices must be built into the pool wall and must meet the following general specifications:

(a) The piping and other components of a skimmer system must be designed for a total capacity of at least 80 percent of the maximum flow rate of the circulation system.

(b) Skimmers must be designed with a minimum flow rate of 25 gallons, 94.64 liters, per minute and a maximum flow rate of 55 gallons, 208.12 liters, per minute. Alternatively, skimmers may also be designed with a minimum of 3.125 gallons, 11.83 liters, to 6.875 gallons, 26.02 liters, per lineal inch, 2.54 ~~em~~centimeters, of weir.

(6) Each skimmer weir must be automatically adjustable and must operate freely with continuous action to variations in water level over a range of at least ~~four~~4 inches, 10.16 ~~em~~centimeters. The weir must operate at all flow variations.

(7) An easily removable and cleanable basket or screen through which all overflow water passes, must be provided to trap large solids.

(8) The skimmer must be provided with a device to prevent air-lock in the suction line. These devices may include an equalizer pipe, surge tank, or other arrangement that will assure a sufficient amount of water for pump suction in the event the pool water drops below the weir level.

(a) If an equalizer pipe is used, the following requirements must be met:

(i) An equalizer pipe must be sized to meet the capacity requirements for the filter and pump.

(ii) An equalizer pipe may not be less than ~~two~~2 inches, 5.08 ~~em~~centimeters, in diameter.

(iii) This pipe must be located at least ~~one~~1 foot, 30.48 ~~em~~centimeters, below a valve or equivalent device that will remain tightly closed under normal operating conditions. In a shallow pool, such as a wading pool, where an equalizer outlet can not be submerged at least one foot below the skimmer valve, the equalizer pipe shall be connected to a separate outlet with an anti-entrapment cover in the floor of the pool.

(iv) The equalizer pipe must have an anti[-]vortex cover.

(9) The skimmer weir and basket must be maintained in a clean and sanitary condition.

~~(10) [Wading pool overflow systems must be connected to the main drain to prevent entrapment of bathers on the bottom of the pool.~~

~~—(11)—~~A spa pool must have a minimum number of surface skimmers based on one skimmer for each 100 square feet, 9.29 square meters of surface area.

R392-302-20. Filtration.

(1) The filter system must provide for isolation of individual filters for backwashing or other service.

(2) The filtration system must be designed to allow the pool operator to easily observe the discharge backwash water from the filter in order to determine if the filter cells are clean.

(3) A public pool must use either a rapid sand filter, hi-rate sand filter, diatomaceous earth filter, or a cartridge filter.

(4) The following requirements are applicable to gravity and pressure rapid sand filters, all of which must comply with the standards of the National Sanitation Foundation, ~~[NSF 50-1992]~~NSF/ANSI 50-2004 or is determined to be equivalent by the department.

(a) Rapid sand filters must be designed for a filter rate of ~~three~~ 3 gallons, 11.36 liters, or less, per minute per square foot, 929 ~~em²~~ square centimeters, of bed area at time of maximum head loss. The filter bed surface area must be sufficient to meet the design rate of flow required by Section R392-302-16, Table 1, for required turnover.

(b) The filter system must be provided with influent pressure, vacuum, or compound gauges to indicate the condition of the filters. Air-relief valves must be provided at or near the high point of the filter or piping system.

(c) The filter system must be designed with necessary valves and piping to permit:

- (i) filtering of all pool water;
- (ii) individual backwashing of filters to a sanitary sewer at a minimum rate of 15 gallons, 56.78 liters, per minute per square foot, 929 ~~em²~~ square centimeters, of filter area;
- (iii) isolation of individual filters;
- (iv) complete drainage of all parts of the system;
- (v) necessary maintenance, operation and inspection in a convenient manner.

(d) Each pressure type filter tank must be provided with an access opening of at least a standard size 11 inch, 27.94 ~~em~~ centimeters, by 15 inch, 38.10 ~~em~~ centimeters, manhole with a cover.

(5) Hi-rate sand filters must comply with the standards of the National Sanitation Foundation, ~~NSF 50-1992~~ NSF/ANSI 50-2004, or be determined to be equivalent by the department.

(a) Hi-rate sand filters must be designed for a filter rate of less than 18 gallons, 68.14 liters, per minute per square foot, 929 ~~em²~~ square centimeters, of bed area. The filter bed area must be sufficient to meet the design rate of flow required by Section R392-302-16, Table 1, for required turnover. Minimum flow rates must be at least 13 gallons, 49.21 liters, per minute per square foot, 929 ~~em²~~ square centimeters, of bed area.

(b) The filter tank and all components must be installed in compliance with the manufacturer's recommendations.

(c) An air-relief valve must be provided at or near the high point of the filter.

(d) The filter system must be provided with an influent pressure gauge to indicate the condition of the filter.

(6) Diatomaceous earth filters, whether of the vacuum or pressure type, must comply in all respects with the standards of the National Sanitation Foundation, ~~NSF 50-1992~~ NSF/ANSI 50-2004, or be determined to be equivalent standards by the department. The filtering area must be compatible with the design pump capacity as required by Section R392-302-16, Table 1.

(a) The design rate of filtration may not exceed 2.0 ~~g.p.m./sq.ft.~~ gallons per minute per square foot, 7.57 liters ~~[l]~~ per 929 ~~em²~~ square centimeters, of effective filtering surface without continuous body feed, nor greater than 2.5 ~~g.p.m./sq.ft.~~ gallons per minute per square foot, 9.46 liters ~~[l]~~ per 929 ~~em²~~ square centimeters, with continuous body feed.

(b) Where body feed is provided, the feeder device must be accurate to within 10 percent, must be capable of continual feeding within a calibrated range, and must be adjustable from two to six ~~ppm~~ parts per million. The device must feed at the design capacity of the circulation pump.

(c) Where fabric is used, filtering area must be determined on the basis of effective filtering surfaces.

(d) The filter and all component parts must be designed and constructed of materials which will withstand normal continuous use

without significant deformation, deterioration, corrosion or wear which could adversely affect filter operations.

(e) If a precoat device is supplied with a potable water supply, then the water must be delivered through an air gap.

(f) The filter plant must be provided with influent pressure, vacuum, or compound gauges to indicate the condition of the filter. In vacuum-type filter installations where the circulating pump is rated at two horsepower or higher, an adjustable high vacuum automatic shut-off device must be provided to prevent damage to the pump. Air-relief valves must be provided at or near the high point of the filter system.

(g) A filter must be designed to facilitate cleaning by one or more of the following methods: backwashing, air-bump-assist backwashing, automatic or manual water spray, or agitation.

(h) The filter system must provide for complete and rapid draining of the filter.

(i) Diatomaceous earth filter backwash water must discharge to the sanitary sewer system through a separation tank. The separation tank must have a visible precautionary statement warning the user not to start up the filter pump without first opening the air relief valve.

(j) Personal protection equipment suitable for preventing inhalation of diatomaceous earth must be provided.

(7) The department may waive National Sanitation Foundation, ~~NSF 50-1992~~ NSF/ANSI 50-2004, standards for diatomaceous earth filters and approve site-built or custom-built vacuum diatomite filters, if the diatomaceous earth filter elements are easily accessible for cleaning by hand hosing after each filtering cycle. Site-built or custom-built vacuum diatomaceous earth filters must comply with all design requirements as specified in Subsection R392-302-20(6). Any design which provides the equivalent washing effectiveness as determined by the department may be acceptable. Where the department or the local health department determines that a potential cross-connection exists, a hose bib in the vicinity of the filter to facilitate the washing operation must be equipped with a vacuum breaker listed by the International Association of Plumbing and Mechanical Officials, IAPMO, the American Society of Sanitary Engineering, A.S.S.E., or other nationally recognized standard.

(8) Vacuum or pressure type cartridge filters must comply with the standards of the National Sanitation Foundation, ~~NSF 50-1992~~ NSF/ANSI 50-2004, or equivalent standards covering such filters as determined by the department.

(a) Sufficient filter area must be provided to meet the design pump capacity as required by Subsection R392-302-16, Table 1.

(b) The designed rate of filtration may not exceed 0.375 gallons, 1.42 liters, per minute per square foot, 929 ~~em²~~ square centimeters, of effective filter area.

(c) The filter and all component parts must be designed and constructed of materials which will withstand normal continuous use without significant deformation, deterioration, corrosion or wear which could adversely affect filter operations. The filter element must be constructed of polyester fiber only.

(d) The filter must be fitted with influent and effluent pressure gauges, vacuum, or compound gauges to indicate the condition of the filter. In vacuum type filter installations where the circulating pump is rated at two horsepower or higher, an adjustable high vacuum automatic shut-off must be provided to prevent damage to the pump. Air-relief valves must be provided at or near the high point of the filter system.

(e) Cleaning of cartridge type filters must be accomplished in accordance with the manufacturer's recommendations.

R392-302-21. Disinfectant and Chemical Feeders.

(1) A pool must be equipped with a disinfectant feeder or feeders which conform to the National Sanitation Foundation, [NSF 50-1992]NSF/ANSI 50-2004, standards relating to adjusted output rate chemical-feeding equipment and flow through chemical feeding equipment for swimming pools, or be deemed equivalent by the department.

(2) A spa pool must be equipped with oxidation reduction potential controllers which monitor chemical demands, including pH and disinfectant demands, and regulate the amount of chemicals fed into the pool circulation system. A spa pool constructed and approved prior to September 16, 1996 is exempt from this requirement if it is able to meet bacteriological quality as required in Subsection R392-302-27(10). Supervisory water testing, calibration checks, inspection and cleaning of sensor probes and chemical injectors must be performed in accordance with the manufacturer's recommendations. If specific manufacturer's recommendations are not made, the inspections, calibration checks, and cleaning of sensor probes must be done at least weekly.

(3) Where compressed chlorine gas is used, the following additional features must be provided:

(a) Chlorine and chlorinating equipment must be located in a secure, well-ventilated enclosure separate from other equipment systems or equipment rooms. Such enclosures may not be below ground level. If an enclosure is a room within a building, it must be provided with vents near the floor which terminate at a location out-of-doors. Enclosures must be located to prevent contamination of air inlets to any buildings and areas used by people. Forced air ventilation capable of providing at least one complete air change per minute, must be provided for enclosures.

(b) Substances which are incompatible with chlorine may not be kept in the chlorine enclosure.

(c) Chlorine cylinders must be secured to prevent their falling over. An approved valve stem wrench must be maintained on the chlorine cylinder so the supply can be shut off quickly in case of emergency. Valve protection hoods and cap nuts must be kept in place except when the cylinder is connected.

(d) Doors to chlorine gas and equipment rooms must be labeled DANGER CHLORINE GAS in letters at least ~~four~~4 inches, 10.16 ~~cm~~centimeters, in height and display the United States Department of Transportation placard and I.D. number for chlorine gas.

(e) The chlorinator must be designed so that leaking chlorine gas will be vented to the out-of-doors.

(f) The chlorinator must be a solution feed type, capable of delivering chlorine at its maximum rate without releasing chlorine gas to the atmosphere. Injector water must be furnished from the pool circulation system with necessary water pressure increases supplied by a booster pump. The booster must be interlocked with both the pool circulation pump and with a flow switch on the return line.

(g) Chlorine feed lines may not carry pressurized chlorine gas.

(h) An unbreakable bottle of ammonium hydroxide, of approximately 28 percent solution in water, must be readily available for chlorine leak detection.

(i) A self-contained breathing apparatus approved by NIOSH for entering environments that are immediately dangerous to life or health must be available and must have a minimum capacity of fifteen minutes.

(j) The breathing apparatus must be kept in a closed cabinet located outside of the room in which the chlorinator is maintained, and must be accessible without use of a key or lock combination.

(k) The facility operator shall demonstrate to the local health department through training documentation, that all persons who operate, or handle gas chlorine equipment, including the equipment specified in Subsections R392-203-21(3)(h) and (i) are knowledgeable about safety and proper equipment handling practices to protect themselves, staff members, and the public from accidental exposure to chlorine gas.

(l) The facility operator or his designee shall immediately notify the local health department of any inadvertent escape of chlorine gas.

(4) Bactericidal agents, other than chlorine and bromine, and their feeding apparatus may be acceptable if approved by the department. Each bactericidal agent must be registered by the U.S. Environmental Protection Agency for use in swimming pools.

(5) Equipment of the positive displacement type and piping used to apply chemicals to the water must be sized, designed, and constructed of materials which can be cleaned and maintained free from clogging at all times. Materials used for such equipment and piping must be resistant to the effects of the chemicals in use.

(6) All auxiliary chemical feed pumps must be wired electrically to the main circulation pump so that the operation of these pumps is dependent upon the operation of the main circulation pump. If a chemical feed pump has an independent timer, the main circulation pump and chemical feed pump timer must be interlocked.

R392-302-22. Safety Requirements and Lifesaving Equipment.

(1) A public pool where a lifeguard is required under Subsection R392-302-30(2) ~~[and having a water surface area greater than 2,000 square feet, 185.8 square meters, must have at least one elevated lifeguard platform or chair,]~~ shall provide for a minimum number of elevated lifeguard chair(s) in accordance with Table 2. Lifeguard chair(s) shall be located to provide a clear unobstructed view of the pool bottom by lifeguards on duty. ~~[At least one additional elevated lifeguard platform or chair must be provided for each additional 2,000 square feet, 185.8 square meters, of water surface area or fraction thereof.]~~

(2) A public pool must have at least one unit of lifesaving equipment. One unit of lifesaving equipment must consist of the following: a Coast Guard-approved ring buoy with an attached rope equal in length to the maximum width of the pool plus 10 feet, American Red Cross-approved rescue tube; a life pole or shepherd's crook type pole with blunted ends and a minimum length of 12 feet, 3.66 meters. The facility operator may substitute a rescue tube for a ring buoy where lifeguard service is provided. Additional units must be provided at the rate of one for each 2,000 square feet, 185.8 square meters, of surface area or fraction thereof. The operator of a pool that has lifeguard services shall provide at least one backboard designed with straps and head stabilization capability.

(3) A public pool must be equipped with a Utah Department of Health standard 27-unit first aid kit which includes the following items:

- 2 Units 1 inch adhesive compress.
- 2 Units 2 inch bandage compress.
- 2 Units 3 inch bandage compress.
- 2 Units 4 inch bandage compress.
- 2 Units 3 inch square plain gauze pads.
- 2 Units gauze roller bandage.

- 2 Units eye dressing packet.
- 1 Unit plain absorbent gauze, .5 sq. yard.
- 1 Unit plain absorbent gauze, 24 inches by 72 inches.
- 2 Units bandage tape.
- 1 Unit butterfly closures, 1 box.
- 1 Unit 3 inch ace bandage.
- 1 Unit assorted adhesive band-aids, 1 box.
- 2 Units triangular bandages.
- 1 Unit microshield.
- 1 Unit scissors.
- 1 Unit tweezers.
- 1 Unit latex gloves, 6 pairs per unit.

(a) The 27 unit first-aid kit must be kept filled, available and ready for use.

(4) Lifesaving equipment must be mounted in readily accessible, conspicuous places around the pool deck. It must be maintained in good repair and operable condition. Lifesaving equipment may not be used or removed by anyone for any reason other than its intended purpose.

(5) Where no lifeguard service is provided in accordance with Subsection R392-302-30(2), a warning sign must be placed in plain view and shall state: WARNING - NO LIFEGUARD ON DUTY and BATHERS SHOULD NOT SWIM ALONE, with clearly legible letters, at least [four]4 inches high, 10.16 [cm]centimeters. In addition, the sign must also state CHILDREN 14 AND UNDER SHOULD NOT USE POOL WITHOUT RESPONSIBLE ADULT SUPERVISION.

(6) Where lifeguard service is required, the facility must have a readily accessible area designated and equipped for emergency first aid care.

TABLE 2
Safety Equipment and Signs

	POOLS WITH LIFEGUARD	POOLS WITH NO LIFEGUARD
Elevated Chair	1/2,000 ft. ² 185.8 m ² or fraction	None
Backboard	1/Facility	None
Room for Emergency Care	1/Facility	None
Ring Buoy with an attached rope equal in length to the maximum width of the pool plus 10 feet(1)	1/2,000 ft. ² 185.8 m ² or fraction	1/2,000 ft. ² 185.8m ² or fraction
Rescue Tube	1/2,000 ft. ² 185.8 m2 or fraction	None
Life Pole or Shepherds Crook	1/2,000 ft. ² 185.8 m ² or fraction	1/2,000 ft. ² 185.8 m ² or fraction
First Aid Kit	1/Facility	1/Facility]
	POOLS WITH LIFEGUARD	POOLS WITH NO LIFEGUARD
Elevated Chair	1,000 through 2,999 sq. ft., 92.9 through 278.61 sq. meters, of surface area	1 None

Each additional 2,000 sq. ft., 185.8 sq. meters, of surface area or fraction	1 additional	None
Backboard	1 per facility	None
Room for Emergency Care	1 per facility	None
Ring Buoy with an attached rope equal in length to the maximum width of the pool plus 10 feet, 3.05 meters	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction
Rescue Tube	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction	None
Life Pole or Shepherds Crook	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction
First Aid Kit	1 per facility	1 per facility

(7) A spa pool is exempt from Section R392-302-22, except for Section R392-302-22(3).

(8) The water temperature in a spa pool may not exceed 105 degrees Fahrenheit.

R392-302-23. Lighting, Ventilation and Electrical Requirements.

(1) A pool constructed after September 16, 1996 may not be used for night swimming in the absence of underwater lighting. The local health [department]officer may grant an exemption to this if it can be demonstrated to him that a 6 inch, 15.24 [cm]centimeters, diameter black disk on a white background placed in the deepest part of the pool can be clearly observed from the pool deck during night time hours. The local health department shall keep a record of this exemption on file. The pool operator shall keep a record of this exemption on file at the facility.

(2) Where night swimming is permitted and underwater lighting is used, refer to Table 3 for illumination requirements.

TABLE 3
Underwater Illumination Requirements

Class	Application	Lamp lumens per square foot of pool surface area- Indoor	Lamp lumens per square foot of pool surface area- Outdoor	Illuminance Uniformity: Maximum to Minimum
I	International, Professional, Tournament	100	60	2.0 : 1
II	College and Diving	75	50	2.5 : 1

III	High School Without Diving	50	30	3.0 : 1
IV	Recreational	30	15	4.0 : 1

(3) Where night swimming is permitted and underwater luminaires are used, area lighting must be provided for the deck areas and directed away from the pool surface as practical to reduce glare. The luminance must be at least 5 horizontal foot candles of light per square foot, 929 ~~[cm²]~~square centimeters, of deck area, but less than the luminance level for the pool shell.

(4) Electrical wiring must conform with Article 680 of the National Electrical Code, as adopted by the State.

(a) Wiring may not be routed under a pool or within the area extending ~~[five]5~~ feet, ~~[1.52 meters]1.52~~ meters, horizontally from the inside wall of the pool as provided in Article 680 of the National Electric Code, without the written approval of the department. The department may deny the installation and use of any electrical appliance, device, or fixture, if its power service is routed under a pool or within the area extending ~~[five]5~~ feet, ~~[1.52 meters]1.52~~ meters, horizontally from the inside wall of the pool, except in the following circumstances:

- (i) For underwater lighting,
- (ii) electrically powered automatic pool shell covers, and
- (iii) competitive judging, timing, and recording apparatus.

(5) Buildings containing indoor pools, bathhouses, dressing rooms, shower rooms, and toilet spaces must be ventilated in accordance with American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard ~~[62-1989-6.1.1.]62.1-2004~~, which is incorporated and adopted by reference.

R392-302-24. Dressing Rooms.

(1) All areas and fixtures within dressing rooms must be maintained in a clean and sanitary condition. Dressing rooms must be equipped with minimum fixtures as required in Subsection R392-302-25(1). The local health department may exempt any bathers from the total number of bathers used to calculate the fixtures required in Subsection R392-302-25(1) who have private use fixtures available within 150 feet, 45.7 meters of the pool.

(2) A separate dressing room must be provided for each sex. The entrances and exits must be designed to break the line of sight into the dressing areas from other locations.

(3) Dressing rooms must be constructed of materials that have smooth, non-slip surfaces, and are impervious to moisture.

(4) Floors must slope to a drain and be constructed to prevent accumulation of water.

(5) Carpeting may not be installed on dressing room floors.

(6) Junctions between walls and floors must be covered.

(7) Partitions between dressing cubicles must be raised at least 10 inches, 25.4 ~~[cm]centimeters~~, above the floor or must be placed on continuous raised masonry or concrete bases at least ~~[four]4~~ inches, 10.16 ~~[cm]centimeters~~, high.

(8) Lockers must be set either on solid masonry bases ~~[four]4~~ inches, 10.16 ~~[cm]centimeters~~, high or on legs elevating the bottom locker at least 10 inches, 25.4 ~~[cm]centimeters~~, above the floor.

(a) Lockers must have louvers for ventilation.

(9) A dressing room must exit to the shallowest area of the pool. The dressing room exit door and the pool deck must be separated by at least 10 feet, 3.05 meters, and be connected by an easily cleanable walkway.

R392-302-25. Toilets and Showers.

(1) The minimum number of toilets and showers for dressing room fixtures must be based upon the designed maximum bather load. Required numbers of fixtures must be based upon 50 percent of the total number of bathers being male and 50 percent being female, except where the facility is used exclusively by one sex. The minimum number of sanitary fixtures must be in accordance with Table 4.

TABLE 4

Sanitary Fixture Minimum Requirements

Water Closets

Male	Female
1:1 to 25	1:1 to 25
2:26 to 75	2:26 to 75
3:76 to 125	3:76 to 125
4:126 to 200	4:126 to 200
5:201 to 300	5:201 to 300
6:301 to 400	6:301 to 400

Over 400, add one fixture for each additional 200 males or 150 females.

Where urinals are provided, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases may not be reduced to less than one half of the minimum specified.

(2) Lavatories must be provided on the basis of one for each water closet up to four, then one for each two additional water closets.

(3) One shower head for each sex must be provided for each 50 bathers or fraction thereof.

(4) Potable water must be provided at all shower heads. Water heaters and thermostatically controlled mixing valves must be inaccessible to bathers and must be capable of providing 2 ~~[gpm]gallons per minute~~, 7.57 liters/[1]per minute, of 90 degree F. water to each shower head for each bather.

(5) Soap must be dispensed at all lavatories. Soap dispensers must be constructed of metal or plastic. Use of bar soap is prohibited.

(6) Fixtures must be designed so that they may be readily cleaned. Fixtures must withstand frequent cleaning and disinfecting.

(7) At least one covered waste can must be provided in each restroom.

R392-302-26. Visitor and Spectator Areas.

(1) When a ~~[four]4~~ foot, 1.22 meters, fence is not present as described in Subsection R392-302-14(3), then visitors, spectators, or animals may not be allowed within ~~[ten]10~~ feet, 3.05 meters, of the pool or ~~[five]5~~ feet, 1.53 meters, of the pool deck. Animals assisting handicapped individuals are exempt from this requirement.

(2) Food or drink is prohibited within ten feet, 3.05 meters, of the pool. Beverages must be served in non-breakable containers.

(3) Trash containers must be provided in visitor and spectator areas. The entire area must be kept free of litter and maintained in a clean, sanitary condition.

R392-302-27. Disinfection and Quality of Water.

(1) A public pool must be continuously disinfected by a process which meets all of the following requirements:

(a) Is registered with the United States Environmental Protection Agency as a disinfecting process or disinfectant product for water.

(b) Imparts a disinfectant residual which may be easily and accurately measured by a field test procedure appropriate to the disinfectant in use.

(c) Is compatible for use with other chemicals normally used in pool water treatment.

(d) Does not create harmful or deleterious physiological effects on bathers if used according to manufacturer's specifications.

(e) Does not create an undue safety hazard if handled, stored and used according to manufacturer's specifications.

(2) If the active disinfecting agent is chlorine, the unstabilized free chlorine residual, as measured by the diethyl-p-phenylene diamine, leuco crystal violet test or other test method approved by the department, must meet the concentration levels listed in Table 6 for all circumstances, bather loads, and the pH level of the water.

(3) If cyanuric acid is used to stabilize the free residual chlorine, or if one of the chlorinated isocyanurate compounds is used as the disinfecting chemical, the concentration of cyanuric acid in the water must be at least ten [ppm]parts per million, but may not exceed 100 [ppm]parts per million and the free residual chlorine, as measured by the diethyl-p-phenylene diamine, leuco crystal violet test or other test method approved by the department, must meet concentrations levels shown in Table 6, depending upon the pH of the water.

(4) If disinfection of the pool water is accomplished by bromine or iodine, the disinfectant must be within the ranges specified in Table 6.

(5) An easy to operate, pool side disinfectant testing kit, compatible with the disinfectant in use and accurate to within 0.2 [ppm]parts per million, must be provided at each public pool. If stabilized chlorine is used, a testing kit for cyanuric acid, accurate to within 10.0 [ppm]parts per million must be provided.

(a) Test kit reagents may not be used if they have exceeded their expiration dates.

(6) Circulation equipment must be operated 24 hours continuously during the operating seasons.

(7) The water must have sufficient clarity at all times so that a black disc, ~~six~~ 6 inches, 15.24 ~~cm~~ centimeters, in diameter, is readily visible if placed on a white field at the deepest point of the pool. The facility must be closed immediately if this requirement is not met.

(8) In a public pool, the difference between the total chlorine and the free chlorine must not be greater than 0.5 [ppm]parts per million as determined by the diethyl-p-phenylene diamine, leuco crystal violet tests or other test method approved by the department.

(a) If the concentration of combined residual chlorine is greater than 0.5 [ppm]parts per million the pool water must be breakpoint chlorinated to oxidize and reduce the concentration of combined chlorines.

(9) A water sample must be collected from a pool at least once per month or as otherwise directed by the local health department, while it is in use, and must be submitted to a laboratory approved by the department to perform Safe Drinking Water Program testing.

(a) The laboratory shall subject the sample to the standard 35 degree Celsius heterotrophic plate count and test for coliform organisms utilizing either a membrane filter test, a multiple tube fermentation test, or a Colilert test.

(b) The testing laboratory must promptly report the results of such analysis to the local health department having jurisdiction and to the facility operator. When requested, the lab or local health department shall mail the results of such analysis to the Utah Department of Health.

(c) When less than two samples per month are collected and submitted for bacteriological analysis, the local health department shall conduct a follow-up inspection for each failing sample to identify the causes for the sample failure. The local health department shall conduct a follow-up within three working days following the reporting of the sample failure to the local health department.

(10) Not more than 15 percent of the samples covering a four month period of time may fail bacteriological quality standards. A seasonal or other pool in operation less than four months may only fail bacteriological quality standards with an initial pre-opening sample prior to the opening of the operating season. If a seasonal or other pool in operation less than four months in a year is sampled on a once per month basis, then failure of any bacteriological water quality sample shall require submission of a second sample within one working day after the sample report has been received.

(a) A pool water sample fails bacteriological quality standards if it:

(i) contains more than 200 bacteria per milliliter, as determined by the standard 35 degrees Celsius heterotrophic plate count;

(ii) shows positive test, confirmed test, for coliform organisms in any of the five 10-milliliter portions of a sample; or

(iii) contains more than 1.0 coliform organisms per 50 ml if the membrane filter test is used; or

(iv) indicates a positive MMO-MUG type test approved by the EPA.

(11) Pool water temperatures, excluding spas and special purpose pools, must meet the following requirements:

(a) Pool water temperatures for general use must be within the range of 82 degrees Fahrenheit, 27.8 degrees Celsius, to 86 degrees Fahrenheit, 30.0 degrees Celsius.

(b) The water in a pool dedicated primarily for swim training and high exertion activities must be within the temperature range of 78 degrees Fahrenheit, 25.6 degrees Celsius, to 82 degrees Fahrenheit, 27.8 degrees Celsius to reduce safety hazards associated with hyperthermia.

(c) The minimum water temperature for a pool is 78 degrees Fahrenheit, 25.6 degrees Celsius.

(d) The local health department may grant an exemption to the pool water temperature requirements for a special purpose pool including a cold plunge pool, but may not exempt maximum hot water temperatures for a spa pool.

(12) Total dissolved solids in a public pool may not exceed 2,500 [ppm]parts per million.

(13) Total alkalinity must be with the range from 100-125 [ppm]parts per million for plaster pools, 80-150 [ppm]parts per million for a spa pool, and 125-150 [ppm]parts per million for a painted or fiberglass pool.

(14) A calcium hardness of at least 200 [ppm]parts per million must be maintained.

(15) The saturation index value of the pool water must be within the range of positive 0.3 and minus 0.3. The saturation index shall be calculated in accordance with Table 5.

TABLE 5

CHEMICAL VALUES AND FORMULA FOR CALCULATING SATURATION INDEX

Formula for Calculating the Saturation Index: $SI = pH + TF + CF + AF - 12.1$ where SI means saturation index, TF means temperature factor, CF means calcium factor, ppm means parts per million, deg F means degrees Fahrenheit, and AF means alkalinity factor.

Temperature	Calcium Hardness	Total Alkalinity			
deg. F	TF	ppm	CF	ppm	AF
32	0.0	5	0.3	5	0.7
37	0.1	25	1.0	25	1.4
46	0.2	50	1.3	50	1.7
53	0.3	75	1.5	75	1.9
60	0.4	100	1.6	100	2.0
66	0.5	150	1.8	150	2.2
76	0.6	200	1.9	200	2.3
84	0.7	300	2.1	300	2.5
94	0.8	400	2.2	400	2.6
105	0.9	800	2.5	800	2.9
128	1.0	1,000	2.6	1,000	3.0

If the SATURATION INDEX is 0, the water is chemically in balance.
 If the INDEX is a minus value, corrosive tendencies are indicated.
 If the INDEX is a positive value, scale-forming tendencies are indicated.
 EXAMPLE: Assume the following factors:
 pH 7.5, Temperature 80 degrees F, 19 degrees C, Calcium Hardness 235
 Total Alkalinity 100
 1- pH - 7.5
 2- TF - 0.7
 3- CF - 1.9
 4- AF - 2.0
 TOTAL: $12.1 - 12.1 = 0.0$
 This water is balanced.

TABLE 6

DISINFECTANT LEVELS AND CHEMICAL PARAMETERS

	POOLS	SPAS	SPECIAL PURPOSE
Stabilized(2) Cl ₂ (ppm)			
pH 7.2 to 7.6	2.0(1)	3.0(1)	2.0(1)
pH 7.7 to 8.0	3.0(1)	5.0(1)	3.0(1)
Non-Stabilized Cl ₂ (ppm)			
pH 7.2 to 7.6	1.0(1)	2.0(1)	2.0(1)
pH 7.7 to 8.0	2.0(1)	3.0(1)	3.0(1)
Bromine (ppm)	4.0(1)	4.0(1)	4.0(1)
Iodine (ppm)	1.0(1)	1.0(1)	1.0(1)
UV + H ₂ O ₂ (ppm)	40.0(1)	40.0(1)	40.0(1)
pH	7.2 to 7.8	7.2 to 7.8	7.2 to 7.8
Total Dissolved	2,500	2,500	2,500
Solids (ppm)			
Cyanuric Acid (ppm)	10 to 100	10 to 100	10 to 100
Temperature (degrees F)		105 degrees F. Max.	
Calcium Hardness (ppm)	200(1)	200(1)	200(1)
Total Alkalinity (ppm)	100 to 125	80 to 150	100 to 125
	(plaster pools)		
	125 to 150		
	(painted or fiberglass pools)		
Saturation Index	Plus or	Plus or	Plus or
(see Table 5)	Minus	Minus	Minus
	0.3	0.3	0.3

Chloramines (combined Cl ₂ residual, ppm)	0.5	0.5	0.5
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(1) Minimum Value]	POOLS	SPAS	SPECIAL PURPOSE
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Stabilized Chlorine (parts per million)			
pH 7.2 to 7.6	2.0(1)	3.0(1)	2.0(1)
pH 7.7 to 8.0	3.0(1)	5.0(1)	3.0(1)
Non-Stabilized Chlorine (parts per million)			
pH 7.2 to 7.6	1.0(1)	2.0(1)	2.0(1)
pH 7.7 to 8.0	2.0(1)	3.0(1)	3.0(1)
Bromine (parts per million)	4.0(1)	4.0(1)	4.0(1)
Iodine (parts per million)	1.0(1)	1.0(1)	1.0(1)
Ultraviolet and Hydrogen Peroxide (parts per million hydrogen peroxide)	40.0(1)	40.0(1)	40.0(1)
pH	7.2 to 7.8	7.2 to 7.8	7.2 to 7.8
Total Dissolved	2,500	2,500	2,500
Solids (parts per million)			
Cyanuric Acid (parts per million)	10 to 100	10 to 100	10 to 100
Maximum Temperature (degrees Fahrenheit)	105	105	105
Calcium Hardness (parts per million)	200(1)	200(1)	200(1)
Total Alkalinity (parts per million)			
Plaster Pools	100 to 125	80 to 150	100 to 125
Painted or Fiberglass Pools	125 to 150	80 to 150	125 to 150
Saturation Index (see Table 5)	Plus or Minus 0.3	Plus or Minus 0.3	Plus or Minus 0.3
Chloramines (combined chlorine residual, parts per million)	0.5	0.5	0.5

Note (1): Minimum Value

R392-302-28. Cleaning Pools.

(1) Visible dirt on the bottom of the pool must be removed at least once every 24 hours or more frequently as needed to keep the pool free of visible dirt.

(2) The pool water surface must be cleaned as often as needed to keep the pool free of visible scum or floating matter.

(3) Pool shell surfaces, handrails, floors, walls, and ceilings of rooms enclosing pools, dressing rooms and equipment rooms, must be kept clean, sanitary, and in good repair.]

~~(4) A hydrotherapy pool must be drained, cleaned and sanitized after each individual use. Small lap pools, or other types of pools used for medically supervised therapy activities are exempt from the draining, cleaning, and disinfecting requirements if the pool has recirculation, filtration, and disinfection in compliance with Subsections R392-302-8(3), R392-302-16(1), and R392-302-27(a-e).]~~

R392-302-29. Supervision of Pools.

(1) Each [P]public pool[s] must be operated by [a]at least one qualified operator as evidenced by a current National Swimming Pool Foundation Certified Pool Operator, CPO, certification[]; a National Recreation and Parks Association Aquatic Facility

Operator, AFO, certification~~[-]~~ or an equivalent certification approved by the department.

(a) Approved certifications ~~[will be]~~ are valid under this rule for no more than five years from the date of issue.

(b) ~~[The]~~ A local health department may [revoke] deny recognition of the certification of a pool operator for cause, including failure to comply with the requirements of this rule, or creating or allowing undue health or safety hazards. The local health department shall notify the department of any [revocations] denials. A denial of recognition of certification is effective in the entire state. The operator may overcome the denial by obtaining a new certification from a certifying authority.

(2) The pool operator must keep written records of all information pertinent to the operation, maintenance and sanitation of each pool facility. Records must be available at the facility and be readily accessible. The pool operator must make records available to the department or the local health department having jurisdiction upon their request. These records must include disinfectant residual in the pool water, pH and temperature of the pool water, pool circulation rate, quantities of chemicals and filter aid used, filter head loss, filter washing schedule, cleaning and disinfecting schedule for pool decks and dressing rooms, bather load, and other information required by the local health department. The pool operator must keep the records at the facility, for at least two operating seasons.

(3) The public pool owner, in consultation with the qualified operator designated in accordance with 392-302-29(1), shall develop an operation, maintenance and sanitation plan for the pool that will assure that the pool water meets the sanitation and quality standards set forth in this rule. The plan shall be in writing and available for inspection by the local health department. At a minimum the plan shall include the frequency of measurements of pool disinfectant residuals, pH and pool water temperature that will be taken. The plan shall also specify who is responsible to take and record the measurements.

(4) If the public pool water samples required in Section R392-302-27(9) fail bacteriological quality standards as defined in Section R392-302-27(10), the local health department shall require the public pool owner and qualified operator to develop an acceptable plan to correct the problem. The local health department may require more frequent water samples, additional training for the qualified operator and also may require that:

(a) The pool operator shall measure and record the level of disinfectant residuals, pH, and pool water temperature at least four times a day. If oxidation reduction potential technology is used in accordance with this rule, the pool operator may reduce water testing to once per day minimum.

(b) The pool operator shall read flow rate gauges and record the pool circulation rate at least four times a day.

(3) Bather load must be limited if necessary to insure the safety of bathers and pool water quality as required in Section R392-302-27.

(4) A sign must be posted in the immediate vicinity of the pool stating the location of the nearest telephone and emergency telephone numbers which shall include:

(a) Name and phone number of nearest police, fire and rescue unit;

(b) Name and phone number of nearest ambulance service;

(c) Name and phone number of nearest hospital.

(5) If a telephone is not available at poolside, emergency telephone numbers must be provided in a form that can be taken to a telephone.

R392-302-30. Supervision of Bathers.

(1) Access to the pool must be prohibited when the facility is not open for use.

(2) Lifeguard service must be provided at a public pool or a private pool if direct fees are charged, public funds support the operation of the pool, or if the pool is used for public uses including swimming lessons, scuba diving instruction, and aquatic competitions. If a pool is normally exempt from the requirement to provide lifeguard services, but is used for some public uses, then lifeguard services are required during the period of public use. For other pools, lifeguard service must be provided, or signs must be clearly posted indicating that lifeguard service is not provided.

(3) A lifeguard must meet each of the following:

(a) Be trained and certified by the American Red Cross, or an equivalent program as approved by the department in ~~[Basic]~~ Standard Level First Aid, C.P.R. for professional rescuers, and Life Guarding.

(b) Be on duty at all times when the pool is open to use by bathers, except as provided in Subsection R392-302-30(2).

(c) Have full authority to enforce all rules of safety and sanitation.

(4) A lifeguard may not have any other duties to perform other than the supervision and safety of bathers while he or she is assigned lifeguarding duties.

(5) Where lifeguard service is required, the number of lifeguards must be sufficient to allow for continuous supervision of all bathers, and surveillance over total pool floor areas.

(6) Lifeguards must be relieved in the rotation of lifeguarding responsibilities at least every 15 minutes with a work break of at least 10 minutes every hour to maintain mental alertness and to prevent mental and physical fatigue.

(7) The facility operator and staff ~~[is]~~ are responsible for the enforcement of the following personal hygiene and behavior rules:

(a) A bather using the facility must take a cleansing shower before entering the pool enclosure. A bather leaving the pool to use the toilet must take a second cleansing shower before returning to the pool enclosure.

(b) A person having a communicable disease transmissible by water must be excluded from public pools. A person having any exposed sub-epidermal tissue, including open blisters, cuts, or other lesions may not use a public pool.

(c) Running, boisterous or rough play, except supervised water sports, is prohibited.

(d) Easily readable placards embodying the above rules of personal hygiene and behavior must be conspicuously posted in the pool enclosure and in the dressing rooms and offices.

(8) A spa pool must have an easily readable caution sign mounted adjacent to the entrance to the spa or hot tub which contains the following information:

(a) The word "caution" centered at the top of the sign in large, bold letters at least two inches in height.

(b) Elderly persons and those suffering from heart disease, diabetes or high blood pressure should consult a physician before using the spa pool.

(c) Persons suffering from a communicable disease transmissible via water may not use the spa pool. Persons using prescription medications should consult a physician before using the spa.

(d) Individuals under the influence of alcohol or other impairing chemical substances should not use the spa pool.

(e) Bathers should not use the spa pool alone.

(f) Pregnant women should not use the spa pool without consulting their physicians.

(g) Persons should not spend more than 15 minutes in the spa in any one session.

(h) Children under the age of 14 must be accompanied and supervised by at least one responsible adult over the age of 18 years, when lifeguards are not on duty.

(i) Children under the age of five years are prohibited from bathing in a spa or hot tub.

(j) Running or engaging in unsafe activities or horseplay in or around the spa pool is prohibited.

(9) Water jets and air induction ports on spa pools must be controlled by an automatic timer which limits the duration of their use to 15 minutes per each cycle of operation. The operator shall mount the timer switch in a location which requires the bather to exit the spa before the timer can be reset for another 15 minute cycle or part thereof.

R392-302-31. Special Purpose Pools.

(1) Special purpose pools must meet the requirements of all Sections of R392-302 in addition to those of this Section as they apply to special design features and uses of special purpose pools.

(2) Slide flumes must meet the following requirements for design, materials, construction, and maintenance:

(a) The flumes within enclosed slides must be designed to prevent accumulation of hazardous concentrations of toxic chemical fumes.

(b) All curves, turns, and tunnels within the path of a slide flume must be designed so that body contact with the flume or tunnel does not present an injury hazard. The slide flume must be banked to keep the slider's body safely inside the flume.

(c) The flume must be free of hazards including joints and mechanical attachments separations, splinters, holes, cracks, or abrasive characteristics.

(d) Wall thickness of flumes must be thick enough so that the continuous and combined action of hydrostatic, dynamic, and static loads and normal environmental deterioration will not cause structural failures which could result in injury. The facility operator or owner shall insure that repairs or patchwork maintains original designed levels of safety and structural integrity. The facility operator or owner shall insure that repairs or patchwork is performed in accordance with manufacturer's guidelines.

(e) Multiple-flume slides must have parallel exits or be constructed, so that the projected path of their centerlines do not intersect within a distance of less than 8 feet, 2.44 meters, beyond the point of forward momentum of the heaviest bather permitted by the engineered design.

(f) A slide flume exit must provide safe entry into the splash pool. Design features for safe entry include a water backup, and a deceleration distance adequate to reduce the slider's exit velocity to a safe speed. Other methods may be acceptable if safe exiting from the slide flume is demonstrated to the department.

(3) The design of water slides or vehicle slides must incorporate the following clearances from the flumes:

(a) A distance between the side of a slide flume exit and a splash pool side wall of at least [~~four~~]4 feet, 1.22 meters.

(b) A distance between nearest sides of adjacent slide flume exits must be at least [~~six~~]6 feet, 1.83 meters.

(c) A distance between a slide flume exit and the opposite end of the splash pool, excluding steps, must be at least 20 feet, 6.10 meters.

(d) A vehicle slide must maintain the following clearances:

(e) A distance between the side of the flume exit and the pool side wall of at least [~~six~~]6 feet, 1.83 meters.

(f) A distance between nearest sides of adjacent vehicle slide flume exits of at least [~~eight~~]8 feet, 2.44 meters.

(g) A distance between the flume exit and the opposite end of the splash pool, excluding steps, must be long enough to provide clear, unobstructed travel for at least 8 feet, 2.44 meters, beyond the point of forward momentum of the heaviest bather permitted by the engineered design.

(4) Vehicles, including toboggans, sleds, inflatable tubes, and mats must be designed and manufactured of materials which will safeguard the safety of riders.

(5) splash pools must meet the following depth requirements:

(a) The depth of a water slide splash pool at the end of a horizontally oriented slide flume exit must be at least [~~three~~]3 feet, 9.14 [~~cm~~]centimeters, but may be required to be deeper if the pool design incorporates special features that may increase risks to bathers as determined by the department.

(b) The depth must be maintained in front of the flume for a distance of at least 20 feet, 6.10 meters, from which point the splash pool floor may have a constant slope upward. Slopes may not be designed or constructed steeper than a 1 to 10 ratio.

(c) The operating water depth of a vehicle slide splash pool, at the flume exit, must be a minimum of 3 feet 6 inches, 1.07 meters. This depth must be maintained to the point at which forward travel of the vehicle ends. From the point at which forward travel ends, the floor may have a constant upward slope to the pool exit at a ratio not to exceed 1 to 10.

(d) The department may waive minimum depth and distance requirements for a splash pool and approve a special exit system if the designer can demonstrate to the department that safe exit from the flume into the splash pool can be assured.

(6) Pump reservoir areas must be accessible for cleaning and maintenance by a [~~three~~]3 foot, 91.44 [~~cm~~]centimeters, minimum width walkway.

(7) A travel path with a minimum width of [~~four~~]4 feet, 1.22 meters, must be provided between the splash pool deck and the top of the flume.

(8) Stairways serving a slide may not retain standing water. Stairways must have non-slip surfaces and shall conform to the requirements of applicable building codes.

(9) Splash pool overflow reservoirs must have sufficient volume to contain at least two minutes of flow from the splash pool overflow. Splash pool overflow reservoirs must have enough water to insure that the splash pool will maintain a constant water depth.

(10) The circulation and filtration equipment of a special purpose pool must be sized to turn over the entire system's water at least once every hour.

(11) Splash pool overflow reservoirs must circulate water through the water treatment system and return when flume supply service pumps are turned off.

(12) Flume pumps and motors must be sized, as specified by the flume manufacturer, and must meet all National Sanitation Foundation, [~~NSF-50-1992~~]NSF/ANSI 50-2004, Section 6. Centrifugal Pumps, standards for pool pumps.

(13) Flume supply service pumps must have check valves on all suction lines.

(14) The splash pool and the splash pool overflow reservoir must be designed to prohibit bather entrapment as water flows from the splash pool to the overflow reservoir.

(15) Perimeter overflow gutter systems must meet the requirements of Section R392-302-19, except that gutters are not required directly under slide flumes or along the weirs which separate splash pools and splash pool overflow reservoirs.

(16) ~~The operation of hydrotherapy pools must meet the following requirements:~~

~~(a) Trained medical or physiotherapy personnel must administer the operation of hydrotherapy pools by direct supervision.~~

~~(b) Therapy staff or other designated staff members must drain, clean and sanitize hydrotherapy pools after each individual use.~~

(17) A caution sign must be mounted adjacent to the entrance to a water slide that states at least the following warnings:

(a) The word caution centered at the top of the sign in large bold letters at least two inches in height.

(b) No running, standing, kneeling, tumbling, or stopping on flumes or in tunnels.

(c) No head first sliding at any time.

(d) The use of a slide while under the influence of alcohol or impairing drugs is prohibited.

(e) Only one person at a time may travel the slide.

(f) Obey instructions of lifeguards and other staff at all times.

(g) Keep all parts of the body within the flume.

(h) Leave the splash pool promptly after exiting from the slide.

R392-302-32. Hydrotherapy Pools.

(1) Unless the pool is drained, cleaned and sanitized after each individual use, a hydrotherapy pool shall at all times comply with R392-302-27-Disinfection and Quality of Water, R392-302-28-Cleaning of Pools and R392-302-29-Supervision of Pools.

(2) A hydrotherapy pool is exempt from all other requirements of R392-302, only if use of the hydrotherapy pool is restricted to therapeutic uses and is under the continuous and direct supervision of licensed medical or physiotherapy personnel.

(3) Local health departments may enter and examine the use of hydrotherapy pools to respond to complaints, to assure that use of the pool is being properly supervised, to examine records of testing and sampling, and to take samples to assure that water quality and cleanliness are maintained.

(4) A local health officer may grant an exception to section R392-302-32(1) if the operator of the hydrotherapy pool can demonstrate that the exception will not compromise pool sanitation or the health or safety of users.

R392-302-~~32~~33. Advisory Committee.

(1) An advisory committee to the Department regarding regulation of public pools is hereby authorized.

(2) The advisory committee shall be appointed by the Executive Director. Representatives from local health departments, pool engineering, construction or maintenance companies and pool owners may be represented on the committee.

(3) Consistent with R380-1, the Executive Director may seek the advice of the advisory committee regarding interpretation of this rule, the granting of exemptions and related matters.

KEY: pools, spas, water slides

Date of Enactment or Last Substantive Amendment: ~~August 9, 2002~~2007

Notice of Continuation: March 22, 2007

Authorizing, and Implemented or Interpreted Law: 26-15-2



Health, Health Care Financing, Coverage and Reimbursement Policy

R414-300

Primary Care Network, Covered-at- Work Demonstration Waiver

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE No.: 29730

FILED: 03/26/2007, 09:40

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The repeal of this rule is necessary because the Covered-at-Work Demonstration Waiver program no longer exists. The program is replaced by Utah's Premium Partnership for Health Insurance (UPP) program, which is a Section 1115 demonstration waiver. This repealed rule describes the authority of the covered-at-work program and its program benefits.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety. The replacement program under the 1115 demonstration waiver is implemented in a separate, companion rule filing, Rule R414-310. (DAR NOTE: The proposed amendment to Rule R414-310 is under DAR No. 29731 in this issue, April 15, 2007, of the Bulletin.)

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

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There is no budget impact because of the repeal of this rule. The costs of the Covered-at-Work Demonstration Waiver program are being replaced by the UPP program.

❖ **LOCAL GOVERNMENTS:** There is no budget impact because local governments do not fund waiver programs.

❖ **OTHER PERSONS:** There is no budget impact because of the repeal of this rule. The costs of the Covered-at-Work Demonstration Waiver program are being replaced by the UPP program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no budget impact because of the repeal of this rule. The costs of the Covered-at-Work Demonstration Waiver program are being replaced by the UPP program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This repeals obsolete language and will have no fiscal impact on business. 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 Gayleen Henderson at the above address, by phone at 801-538-6641 or 801-538-6135, by FAX at 801-538-6099 or 801-538-6860, or by Internet E-mail at cdevashrayee@utah.gov or ghenderson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2007

AUTHORIZED BY: David N. Sundwall, Executive Director

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

~~**R414-300. Primary Care Network, Covered-at-Work Demonstration Waiver.**~~

~~**R414-300-1. Introduction and Authority.**~~

~~This rule describes the benefits under the Primary Care Network (PCN) Covered at Work Program. The PCN Covered at Work Program is authorized by an amendment to a waiver of federal Medicaid requirements approved by the federal Center for Medicare and Medicaid Services and allowed under Section 1115 of the Social Security Act effective January 1, 1999. This rule is authorized by Title 26, Chapter 18.~~

~~**R414-300-2. Definitions.**~~

~~"Spouse" means an individual who is married to an applicant or enrollee and has not legally terminated the marriage.~~

~~**R414-300-3. Nature of Program and Benefits.**~~

~~(1) The Covered at Work Program provides cash reimbursement to an enrollee who meets the eligibility requirements and application requirements of R414-310. The Covered at Work Program provides benefits as described in this section.~~

~~(2) The reimbursement shall not exceed the amount the employee pays toward the cost of the employee's employer sponsored coverage for the employee and the employee's spouse if covered under the~~

~~employee's plan. The employer must pay at least 50 percent of the employee's health insurance premium.~~

~~(3) The amount of reimbursement for a single person or for a married couple when only one spouse is eligible for the reimbursement, will be provided on the following schedule, in the designated amounts:~~

~~(a) Up to \$50 per month for the first 24 months of eligibility.~~

~~(b) Up to \$40 per month for the next 12 months (third year) of eligibility.~~

~~(c) Up to \$30 per month for the next 12 months (fourth year) of eligibility.~~

~~(d) Up to \$20 per month for the last 12 months (fifth year) of eligibility.~~

~~(4) The amount of reimbursement for a married couple when both spouses are eligible for the reimbursement and both are covered under the same employer sponsored plan, will be provided on the following schedule, in the designated amounts:~~

~~(a) Up to \$100 per month for the first 24 months of eligibility.~~

~~(b) Up to \$80 per month for the next 12 months (third year) of eligibility.~~

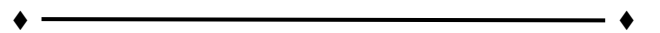
~~(c) Up to \$60 per month for the next 12 months (fourth year) of eligibility.~~

~~(d) Up to \$40 per month for the last 12 months (fifth year) of eligibility.~~

~~(5) The amount of reimbursement for a married couple when both spouses are eligible for the reimbursement but are covered under their own separate employer sponsored plans, will be provided as described in subsection (3) for each spouse.~~

~~(6) Benefits provided to a Covered at Work enrollee are limited to a lifetime maximum of 60 months.~~

~~**KEY: Medicaid, primary care network, covered at work benefits**
Date of Enactment or Last Substantive Amendment: February 10, 2004
Authorizing, and Implemented or Interpreted Law: 26-18-3]~~



Health, Health Care Financing,
Coverage and Reimbursement Policy

R414-310

Medicaid Primary Care Network
Demonstration Waiver

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29731

FILED: 03/26/2007, 10:12

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is necessary to remove references to and the rule (Rule R414-300) for the Covered-at-Work program, which is being discontinued and replaced by a new program, Utah's Premium Partnership for Health Insurance (UPP). The UPP program is a Section 1115 demonstration program awarded to the Utah Department of Health and is described in Rule R414-320 which was effective 11/01/2006. This rule also clarifies how the agency determines the due date for verifications and

the effective date of Children's Health Insurance Program (CHIP) enrollment. (DAR NOTE: The proposed repeal of Rule R414-300 is under DAR No. 29730 in this issue, April 15, 2007, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule is being modified throughout to delete all references to and the rules for the Covered-at-Work program. This rule defines an "employer-sponsored health plan" and outlines UPP service coverage. This rule clarifies that an individual may choose to enroll in either the UPP program or the PCN program when the cost of the least expensive employer-sponsored health insurance plan exceeds 15% of the household's gross income. This rule clarifies that all child support payments, including those for repayment of past due child support, is counted as income of a child, and describes how the agency determines the due date for verifications and the effective date of Primary Care Network (PCN) enrollment.

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

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** This rule change will not affect the state budget because it is removing references to the Covered-at-Work program, which is being discontinued. State budget costs for the replacement program, Utah's Premium Partnership for Health Insurance, are described in Rule R414-320 which was adopted on 11/01/2006.
- ❖ **LOCAL GOVERNMENTS:** This rule change will not affect local government because it is removing references to the Covered-at-Work program which is being discontinued.
- ❖ **OTHER PERSONS:** This rule change will not affect other persons because it is removing references to the Covered-at-Work program which is being discontinued. Costs to other persons for the replacement program are described in Rule R414-320 which was adopted on 11/01/2006.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule change does not involve compliance costs to any persons because it is removing references to the Covered-at-Work program which is being discontinued. Costs to other persons for the replacement program are described in Rule R414-320 which was adopted on 11/01/2006.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule assists with the implementation of the UPP program and should not have a negative fiscal impact. 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:

Gayleen Henderson or Craig Devashrayee at the above address, by phone at 801-538-6135 or 801-538-6641, by FAX at 801-538-6860 or 801-538-6099, or by Internet E-mail at ghenderson@utah.gov or cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2007

AUTHORIZED BY: David N. Sundwall, Executive Director

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

R414-310. Medicaid Primary Care Network Demonstration Waiver.

R414-310-2. Definitions.

The following definitions apply throughout this rule:

- (1) "Applicant" means an individual who applies for benefits under the Primary Care Network program~~[-or the Primary Care Network-Covered-at-Work program]~~, but who is not an enrollee.
- (2) "Best estimate" means the Department's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.
- (3) "Co-payment and co-insurance" means a portion of the cost for a medical service for which the enrollee is responsible to pay for services received under the Primary Care Network.
- (4) "Deeming" or "deemed" means a process of counting income from a spouse or an alien's sponsor to decide what amount of income after certain allowable deductions, if any, must be considered income to an applicant or enrollee.
- (5) "Department" means the Utah Department of Health.
- (6) "Enrollee" means an individual who has applied for and been found eligible for the Primary Care Network program~~[-or the Primary Care Network-Covered-at-Work Program]~~ and has paid the enrollment fee.
- (7) "Enrollment fee" means a payment that an applicant or an enrollee must pay to the Department to enroll in and receive coverage under the Primary Care Network~~[-or the Primary Care Network-Covered-at-Work]~~ program.
- (8) "Employer-sponsored health plan" means health insurance that meets the requirements of R414-320-2 (8) (a) (b) (c) (d) and (e).
- ~~(8)~~(9) "Income averaging" means a process of using a history of past and current income and averaging it over a determined period of time that is representative of future income.
- ~~(9)~~(10) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.
- ~~(10)~~(11) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.
- ~~(11)~~(12) "Local office" means any Bureau of Eligibility Services or Department of Workforce Services office location, outreach location, or telephone location where an individual may apply for medical assistance.

~~[(12)](13)~~ "Open enrollment means a time period during which the Department accepts applications for the Primary Care Network ~~[or the Covered at Work] program[s].~~

~~[(13)](14)~~ "Primary Care Network" or "PCN" ~~[includes two programs under a federal waiver of Medicaid regulations. The two programs are:~~

~~(a) The Primary Care Network Program. This program provides primary care medical services to uninsured adults who do not otherwise qualify for Medicaid] means the program for benefits under the Medicaid Primary Care Network Demonstration Waiver.]; and;~~

~~(b) The Covered at Work Program. This program provides cash reimbursement for all or part of the insurance premium paid by an employee for health insurance coverage through an employer-sponsored health insurance plan that covers either the eligible employee, the eligible spouse of the employee, or both.]~~

~~[(14)](15)~~ "Recertification month" means the last month of the eligibility period for an enrollee.

~~[(15)](16)~~ "Spouse" means any individual who has been married to an applicant or enrollee and has not legally terminated the marriage.

~~[(16)](17)~~ "Verifications" means the proofs needed to decide if an individual meets the eligibility criteria to be enrolled in the program. Verifications may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of the individual.

~~[(17)](18)~~ "Student health insurance plan" means a health insurance plan that is offered to students directly through a university or other educational facility or through a private health insurance company that offers coverage plans specifically for students.

~~(19)~~ "Utah's Premium Partnership for Health Insurance" or "UPP" means the program described in R414-320.

R414-310-3. Applicant and Enrollee Rights and Responsibilities.

(1) Any person may apply during an open enrollment period who meets the limitations set by the Department. The open enrollment period may be limited to:

- (a) individuals with children under age 19 in the home;
- (b) individuals without children under age 19 in the home;
- (c) those enrolled in the PCN program;
- (d) those enrolled in the ~~[Covered at Work]~~UPP program;
- (e) those enrolled in the General Assistance program;
- (f) those that were enrolled in the Medicaid program within the last thirty days prior to the beginning of the open enrollment period;

or

(g) such other group designated in advance by the Department consistent with efficient administration of the program.

(2) If a person needs help to apply, he may have a friend or family member help, or he may request help from the local office or outreach staff.

(3) Applicants and enrollees must provide requested information and verifications within the time limits given. The Department will allow the client at least 10 calendar days from the date of a request to provide information and may grant additional time to provide information and verifications upon request of the applicant or enrollee.

(4) Applicants and enrollees have a right to be notified about the decision made on an application, or other action taken that affects their eligibility for benefits.

(5) Applicants and enrollees may look at information in their case file that was used to make an eligibility determination.

(6) Anyone may look at the eligibility policy manuals located at any Department local office.

(7) An individual must repay any benefits received under the Primary Care Network program ~~[or the Covered at Work program]~~ if the Department determines that the individual was not eligible to receive such benefits.

(8) Applicants and enrollees must report certain changes to the local office within ten calendar days of the day the change becomes known. The local office shall notify the applicant at the time of application of the changes that the enrollee must report. Some examples of reportable changes include:

(a) An enrollee in the Primary Care Network program begins to receive coverage under a group health plan or other health insurance coverage.

(b) An enrollee in the Primary Care Network program begins to have access to coverage under a group health plan or other health insurance coverage.

~~(c) [An enrollee in the Covered at Work program no longer pays for coverage under an employer-sponsored health plan.~~

~~(d) An enrollee in the Primary Care Network program [or the Covered at Work program] begins to receive coverage under, or begins to have access to student health insurance, Medicare Part A or B, or the Veteran's Administration Health Care System.~~

~~(e) An enrollee in the Covered at Work program has a change in the amount the enrollee pays for coverage under an employer-sponsored health plan.~~

~~(f) (d) An enrollee leaves the household or dies.~~

~~(g) (e) An enrollee or the household moves out of state.~~

~~(h) (f) Change of address of an enrollee or the household.~~

~~(i) (g) An enrollee enters a public institution or an institution for mental diseases.~~

(9) An applicant or enrollee has a right to request an agency conference or a fair hearing as described in R414-301-5 and R414-301-6.

(10) An enrollee in the Primary Care Network program is responsible for paying any required co-payments or co-insurance amounts to providers for medical services the enrollee receives that are covered under the Primary Care Network program. ~~[~~

~~(11) An enrollee in the Covered at Work program must continue to pay premiums and remain enrolled in the employer-sponsored health plan to be eligible for benefits.]~~

R414-310-4. General Eligibility Requirements.

(1) The provisions of R414-302-1, R414-302-2, R414-302-3, R414-302-5, and R414-302-6 apply to applicants and enrollees of the Primary Care Network program ~~[and the Covered at Work program].~~

(2) An individual who is not a U.S. citizen and does not meet the alien status requirements of R414-302-1 is not eligible for any services or benefits under the Primary Care Network program ~~[or the Covered at Work program].~~

(3) Applicants and enrollees are not required to provide Duty of Support information to enroll in the Primary Care Network program ~~[or the Covered at Work program].~~ An individual who would be eligible for Medicaid but fails to cooperate with Duty of

Support requirements required by the Medicaid program cannot enroll in the Primary Care Network program ~~or the Covered at Work program~~.

(4) Individuals who must pay a spenddown or premium to receive Medicaid can enroll in the Primary Care Network program ~~or the Covered at Work program~~ if they meet the program eligibility criteria in any month they do not receive Medicaid as long as the Department has not stopped enrollment under the provisions of R414-310-16(2). If the Department has stopped enrollment, the individual must wait for an applicable open enrollment period to enroll in the PCN ~~or the Covered at Work~~ program.

R414-310-5. Verification and Information Exchange.

(1) The provisions of ~~[R414-307-4]~~R414-308-4 apply to applicants and enrollees of the Primary Care Network program ~~and the Covered at Work program~~.

(2) The Department safeguards information about applicants and enrollees according to the provisions found in R414-301-4.

R414-310-6. Residents of Institutions.

The provisions of R414-302-4(1), (3) and (4) apply to applicants and enrollees of the Primary Care Network program ~~and the Covered at Work program~~.

R414-310-7. Creditable Health Coverage.

(1) The Department adopts 42 CFR 433.138(b) and 435.610, 2004 ed., and Section 1915(b) of the Compilation of the Social Security Laws, in effect January 1, 2004, which are incorporated by reference.

(2) An individual who is covered under a group health plan or other creditable health insurance coverage, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), at the time of application is not eligible for enrollment in the Primary Care Network program ~~or the Covered at Work program~~. This includes coverage under Medicare Part A or B, student health insurance, and the Veteran's Administration Health Care System. However, an individual who is enrolled in the Utah Health Insurance Pool ~~(H.I.P.)~~ may enroll in the Primary Care Network ~~or the Covered at Work~~ program.

(3) Eligibility for the Primary Care Network program ~~or the Covered at Work program~~ for an individual who has access to but has not yet enrolled in health insurance coverage through an employer or a spouse's employer will be determined as follows:

(a) If the cost of the ~~employer sponsored coverage~~ least expensive health insurance plan offered by the employer does not exceed ~~5%~~15% of the household's gross income, the individual is not eligible for the Primary Care Network program ~~or the Covered at Work program~~.

~~—(b) If the cost of the employer sponsored coverage exceeds 5% but does not exceed 15% of the household's gross income, the individual is not eligible for the Primary Care Network program. These individuals may be eligible for the Covered at Work program if they choose to enroll in the employer sponsored coverage, by the end of the month following the month in which they apply for the Covered at Work program.~~

~~]~~ ~~(c)~~(b) If the cost of the ~~employer sponsored coverage~~ least expensive health insurance plan offered by the employer exceeds 15% of the household's gross income, and the employer offers a health plan that meets the requirements of R414-320-2 (8) (a) (b) (c) (d) and (e), the individual may choose to enroll in either the Primary Care Network program or the ~~Covered at Work~~UPP program unless enrollment for one of these programs has been stopped under the provisions of R414-310-16(2).~~—To enroll in the Covered at Work program, the~~

~~individual must enroll in the employer sponsored coverage, by the end of the month following the month in which they apply for the Covered at Work program.]~~

~~(c) If the cost of the least expensive health insurance plan offered by the employer exceeds 15% of the household's gross income, but the employer does not offer a health plan that meets the requirements in R414-320-2 (8) (a) (b) (c) (d) and (e), the individual may only enroll in the PCN program.~~

(d) The individual is considered to have access to coverage even if the employer offers coverage only during an open enrollment period.

(4) An individual who is covered under Medicare Part A or Part B, or who could enroll in Medicare Part B coverage, is not eligible for enrollment in the Primary Care Network ~~or the Covered at Work~~ program, even if the individual must wait for a Medicare open enrollment period to apply for Medicare benefits.

(5) An individual who is enrolled in the Veteran's Administration (VA) Health Care System is not eligible for enrollment in the Primary Care Network program ~~or the Covered at Work program~~. An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for the Primary Care Network program ~~or the Covered at Work program~~ while waiting for enrollment in the VA Health Care System to become effective. To be eligible during this waiting period, the individual must initiate the process to enroll in the VA Health Care System. Eligibility for the Primary Care Network program ~~or the Covered at Work program~~ ends once the individual becomes enrolled in the VA Health Care System.

(6) Individuals who are full-time students and who can enroll in student health insurance coverage are not eligible to enroll in the Primary Care Network program ~~or the Covered at Work program~~.

(7) The Department shall deny eligibility if the applicant or spouse has voluntarily terminated health insurance coverage within the six months immediately prior to the application date for enrollment under the Primary Care Network program ~~or the Covered at Work program~~. An applicant or an applicant's spouse can be eligible for the Primary Care Network ~~or the Covered at Work program~~ if their prior insurance ended more than six months before the application date. An applicant or applicant's spouse who voluntarily discontinues health insurance coverage under a COBRA plan or under the state Health Insurance Pool, or who is involuntarily terminated from an employer's plan may be eligible for the Primary Care Network ~~or the Covered at Work~~ program without a six month waiting period.

(8) Notwithstanding the limitations in this section, an individual with creditable health coverage operated or financed by the Indian Health Services may enroll in the Primary Care Network program ~~or the Covered at Work program~~.

(9) Individuals must report at application and recertification whether each individual for whom enrollment is being requested has access to or is covered by a group health plan or other creditable health insurance coverage. This includes coverage that may be available through an employer or a spouse's employer, a student health insurance plan, Medicare Part A or B, or the VA Health Care System.

(10) The Department shall deny an application or recertification if the applicant or enrollee fails to respond to questions about health insurance coverage for any individual the household seeks to enroll or recertify in the program.

R414-310-8. Household Composition.

(1) The following individuals are included in the household when determining household size for the purpose of computing financial eligibility for the Primary Care Network Program~~[-or the Covered-at-Work program]~~:

- (a) the individual;
- (b) the individual's spouse living with the individual;
- (c) any children of the individual or the individual's spouse who are under age 19 and living with the individual; and
- (d) an unborn child if the individual is pregnant, or if the applicant's legal spouse who lives in the home is pregnant.

(2) A household member who is temporarily absent for schooling, training, employment, medical treatment or military service, or who will return home to live within 30 days from the date of application is considered part of the household.

R414-310-9. Age Requirement.

(1) An individual must be at least 19 and not yet 65 years of age to enroll in the Primary Care Network program~~[-or the Covered-at-Work program]~~.

(2) The month in which an individual's 19th birthday occurs is the first month the person can be eligible for enrollment in the Primary Care Network program~~[-or the Covered-at-Work program]~~.

(a) If the individual could qualify for Medicaid in that month without paying a spenddown or premium, the individual cannot enroll in the Primary Care Network ~~[-or Covered-at-Work]~~ program until the following month.

(b) the individual could enroll in the Children's Health Insurance Program and it is an open enrollment period for CHIP for that month, the individual cannot enroll in the Primary Care Network program~~[-or the Covered-at-Work program]~~ until the following month.

(3) The benefit effective date for the Primary Care Network program~~[-or the Covered-at-Work program]~~ cannot be earlier than the date of the 19th birthday.

(4) The individual's 65th birthday month is the last month the person can be eligible for enrollment in the Primary Care Network program~~[-or the Covered-at-Work program]~~.

R414-310-10. Income Provisions.

(1) To be eligible to enroll in the Primary Care Network program~~[-or the Covered-at-Work program]~~, a household's countable gross income must be equal to or less than 150% of the federal non-farm poverty guideline for a household of the same size. An individual with income above 150% of the federal poverty guideline is not allowed to spend down income to be eligible under the Primary Care Network program~~[-or the Covered-at-Work program]~~. All gross income, earned and unearned, received by the individual and the individual's spouse is counted toward household income, unless this section specifically describes a different treatment of the income.

(2) Any income in a trust that is available to, or is received by a household member, is countable income.

(3) Payments received from the Family Employment Program, Working Toward Employment program, refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3 are countable income.

(4) Rental income is countable income. The following expenses can be deducted:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property;

(c) utility costs only if they are paid by the owner; and

(d) interest only on a loan or mortgage secured by the rental property.

(5) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(6) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the certification period.

(7) Needs-based Veteran's pensions are counted as income. Only the portion of a Veteran's Administration check to which the individual is legally entitled is countable income.

(8) Child support~~[-payments received by a parent in the household which is in repayment of past due child support is counted as income for the parent. Current child support]~~ payments received for a dependent child living in the home are counted as that child's income.

(9) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or which is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service, or did not work to receive, is not counted as income.

(10) Supplemental Security Income and State Supplemental payments are countable income.

(11) Income, unearned and earned, shall be deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997. Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public assistance.

(12) Income that is defined in 20 CFR 416 Subpart K, Appendix, 2004 edition, which is incorporated by reference, is not countable.

(13) Payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs are not countable.

(14) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(15) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

(16) Child Care Assistance under Title XX is not countable income.

(17) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the State Department of Health are not countable income.

(18) Earned and unearned income of a child who is under age 19 is not counted if the child is not the head of a household.

(19) Educational income, such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

(20) Reimbursements for employee work expenses incurred by an individual are not countable income.

(21) The value of food stamp assistance is not countable income.

R414-310-11. Budgeting.

This section describes methods that the Department uses to determine the household's countable monthly or annual income.

(1) The gross income of all household members is counted in determining the eligibility of the applicant or enrollee, unless the income is excluded under this rule. Only expenses that are required to make an income available to the individual are deducted from the gross income. No other deductions are allowed.

(2) The Department determines monthly income by taking into account the months of pay where an individual receives a fifth paycheck when paid weekly, or a third paycheck when paid every other week. The Department multiplies the weekly amount by 4.3 to obtain a monthly amount. The Department multiplies income paid biweekly by 2.15 to obtain a monthly amount.

(3) The Department shall determine an individual's eligibility prospectively for the upcoming certification period at the time of application and at each recertification for continuing eligibility. The Department determines prospective eligibility by using the best estimate of the household's average monthly income that is expected to be received or made available to the household during the upcoming certification period. The Department prorates income that is received less often than monthly over the certification period to determine an average monthly income. The Department may request prior years' tax returns as well as current income information to determine a household's income.

(4) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The Department may use a combination of methods to obtain the most accurate best estimate. The best estimate may be a monthly amount that is expected to be received each month of the certification period, or an annual amount that is prorated over the certification period. The Department may use different methods for different types of income received in the same household.

(5) The Department determines farm and self-employment income by using the individual's most recent tax return forms. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the Department may request income information from the most recent time period during which the individual had farm or self-employment income. The Department deducts 40% of the gross income as a deduction for business expenses to determine the countable income of the individual. For individuals who have business expenses greater than 40%, the Department may exclude more than 40% if the individual can demonstrate that the actual expenses were greater than 40%. The Department deducts the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

(6) The Department may annualize income for any household and specifically for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

(7) The Department may request additional information and verification about how a household is meeting expenses if the average household income appears to be insufficient to meet the household's living expenses.

R414-310-12. Assets.

There is no asset test for eligibility in the Primary Care Network program~~[or the Covered-at-Work program]~~.

R414-310-13. Application Procedure.

(1) The Department adopts 42 CFR 435.907 and 435.908, 2004 ed., which are incorporated by reference. The Department shall maintain case records as defined in R414-308-8~~[04]~~.

(2) The applicant must complete and sign a written application or complete an application on-line via the Internet to enroll in the Primary Care Network program~~[or the Covered-at-Work program]~~.

(a) The Department accepts any Department-approved application form for medical assistance programs offered by the state as an application for the Primary Care Network program~~[or the Covered-at-Work program]~~. The local office eligibility worker may require the applicant to provide additional information that was not asked for on the form the applicant completed, and may require the applicant to sign a signature page from a hardcopy medical application form.

(b) If an applicant cannot write, he must make his mark on the application form and have at least one witness to the signature. A legal guardian or a person with power of attorney may sign the application form for the applicant.

(c) An authorized representative may apply for the applicant if unusual circumstances prevent the individual from completing the application process himself. The applicant must sign the application form if possible.

(3) The [date of] application date is the [day] date the agency receives a signed application form [is received by the] at a local office by 5:00 p.m. on a business day. This applies to paper applications delivered in person or by mail, paper applications sent via facsimile transmission, and electronic applications sent via the internet. If a local office receives an application after 5:00 p.m. on a business day, the date of application is the next business day.

(4) The application date for applications delivered to an outreach location is as follows:

(a) If the application is delivered at a time when the outreach staff is working at that location, the date of application is the date the outreach staff receives the application.

(b) If the application is delivered at a time when the outreach office is closed, including being closed for weekends or holidays, the date of application is the last business day that a staff person from the state agency was available to receive or pick up applications from the location.

(5) The due date for verifications needed to complete an application and determine eligibility is 5:00 p.m. on the last day of the application period.

~~(4)6~~ If an applicant has a legal guardian, a person with a power of attorney, or an authorized representative, the local office shall send decision notices, requests for information, and forms that must be completed to both the individual and the individual's representative, or to just the representative if requested or if determined appropriate.

~~(5)7~~ The Department shall reinstate a medical case without requiring a new application if the case was closed in error.

~~(6)8~~ The Department shall continue enrollment without requiring a new application if the case was closed for failure to complete a recertification or comply with a request for information or verification:

(a) if the enrollee complies before the effective date of the case closure or by the end of the month immediately following the month the case was closed; and

(b) the individual continues to meet all eligibility requirements.

(~~7~~⁹) An applicant may withdraw an application for the Primary Care Network program [~~or the Covered at Work program~~] any time before the Department completes an eligibility decision on the application.

(~~8~~¹⁰) The applicant shall pay an annual enrollment fee to enroll in the Primary Care Network Program [~~or Primary Care Network—Covered at Work Program~~] once the local office has determined that the individual meets the eligibility criteria for enrollment.

(a) Coverage does not begin until the Department receives the enrollment fee.

(b) The enrollment fee covers both the individual and the individual's spouse if the spouse is also eligible for enrollment in the Primary Care Network [~~or the Primary Care Network—Covered at Work~~] Program.

(c) The enrollment fee is required at application and at each recertification.

(d) The enrollment fee must be paid to the local office in cash, or by check or money order made out to the Department of Health or to the Department of Workforce Services.

(e) The enrollment fee for an individual or married couple receiving General Assistance from the Department of Workforce Services is \$15. The enrollment fee for an individual or couple who does not receive General Assistance but whose countable income is less than 50 percent of the federal poverty guideline applicable their household size is \$25. The enrollment fee for any other individual or married couple is \$50.

(f) The Department may refund the enrollment fee if it decides the person was ineligible for the program; however, the Department may retain the enrollment fee to the extent that the individual owes any overpayment of benefits that were paid in error on behalf of the individual by the Department.

(~~9~~¹¹) If an eligible household requests enrollment for a spouse, the application date for the spouse is the date of the request. A new application form is not required; however, the household shall provide the information necessary to determine eligibility for the spouse, including information about access to creditable health insurance, including Medicare Part A or B, student health insurance, and the VA Health Care System.

(a) Coverage or benefits for the spouse will be allowed from the date of request or the date an application is received through the end of the current certification period.

(b) A new enrollment fee is not required to add a spouse during the current certification period.

(c) A new income test is not required to add the spouse for the months remaining in the current certification period.

(d) A spouse may be added only if the Department has not stopped enrollment under section R414-310-16.

(e) The income of the spouse will be considered and payment of the enrollment fee will be required at the next scheduled recertification.

R414-310-14. Eligibility Decisions and Recertification.

(1) The Department adopts 42 CFR 435.911 and 435.912, 2004 ed., which are incorporated by reference.

(2) When an individual applies for PCN [~~or the Covered at Work program~~], the local office shall determine if the individual is eligible for Medicaid. An individual who qualifies for Medicaid without paying a spenddown or a premium cannot enroll in the Primary Care Network [~~or the Covered at Work~~] program. If the individual appears to qualify for Medicaid, but additional information is required to determine eligibility for Medicaid, the applicant must provide additional

information requested by the eligibility worker. Failure to provide the requested information shall result in the application being denied.

(a) If the individual must pay a spenddown or premium to qualify for Medicaid, the individual may choose to enroll in the PCN [~~or the Covered at Work~~] program if it is an open enrollment period [~~for those programs~~], and the individual meets all the applicable criteria for eligibility. If the PCN [~~or the Covered at Work programs~~] program [~~are~~] is not in an enrollment period, the individual must wait for an open enrollment period.

(b) At recertification for PCN [~~or the Covered at Work program~~], the local office shall first review eligibility for Medicaid. If the individual qualifies for Medicaid without a spenddown or premium, the individual cannot be reenrolled in the PCN [~~or Covered at Work~~] program. If the individual appears to qualify for Medicaid, the applicant must provide additional information requested by the eligibility worker. Failure to provide the requested information shall result in the application being denied.

(3) To enroll, the individual must meet the eligibility criteria for enrollment in the Primary Care Network program [~~or the Covered at Work program~~], pay the enrollment fee, and it must be a time when the Department has not stopped enrollment under section R414-310-16. [~~An applicant for the Covered at Work program must be able to enroll in his or her employer-sponsored health insurance by the end of the month following the application month to be eligible for the Covered at Work program. Otherwise, eligibility will be denied, and the individual may reapply during another open enrollment period.~~]

(4) The local office shall complete a determination of eligibility or ineligibility for each application unless:

(a) the applicant voluntarily withdraws the application and the local office sends a notice to the applicant to confirm the withdrawal;

(b) the applicant died; or

(c) the applicant cannot be located; or

(d) the applicant has not responded to requests for information within the [~~30~~⁴⁵] day application period or by the date the eligibility worker asked the information or verifications to be returned, if that date is later.

(5) The enrollee must recertify eligibility at least every 12 months.

(6) The local office eligibility worker may require the applicant, the applicant's spouse, or the applicant's authorized representative to attend an interview as part of the application and recertification process. Interviews may be conducted in person or over the telephone, at the local office eligibility worker's discretion.

(7) The enrollee must complete the recertification process and provide the required verifications by the end of the recertification month.

(a) If the enrollee completes the recertification, continues to meet all eligibility criteria and pays the enrollment fee, coverage will be continued without interruption.

(b) The case will be closed at the end of the recertification month if the enrollee does not complete the recertification process and provide required verifications by the end of the recertification month.

(c) If an enrollee does not complete the recertification by the end of the recertification month, but completes the process and provides required verifications by the end of the month immediately following the recertification month, coverage will be reinstated as of the first of that month if the individual continues to be eligible and pays the enrollment fee.

(8) The eligibility worker may extend the recertification due date if the enrollee demonstrates that a medical emergency, death of an immediate family member, natural disaster or other similar cause

prevented the enrollee from completing the recertification process on time.

R414-310-15. Effective Date of Enrollment and Enrollment Period.

(1) The effective date of enrollment in the Primary Care Network program is the day that a completed and signed application ~~[or an on-line application]~~ is received by the local office ~~as defined in R414-310-13(3) and R414-310-13(4)(a) and (b)~~ and the applicant meets all eligibility criteria, including payment of the enrollment fee. The Department shall not provide any benefits or pay for any services received before the effective enrollment date.

(2) ~~[The effective date of enrollment in the Covered at Work program cannot be before the month in which the applicant pays a premium for the employer sponsored health insurance and is determined as follows:~~

~~—(a) The effective date of enrollment is the date an application is received and the person is found eligible, including payment of the enrollment fee, if the applicant enrolls in and pays the first premium for the employer sponsored health insurance in the application month.~~

~~—(b) If the applicant will not pay a premium for the employer-sponsored health insurance in the application month, the effective date of enrollment is the first day of the month in which the applicant pays a premium for the employer sponsored health insurance. The applicant must enroll in the employer-sponsored health insurance no later than the end of the month following the month the application is received. The applicant must be determined eligible and pay the enrollment fee for the Covered at Work program.~~

~~—(c) If the applicant cannot enroll in the employer-sponsored health insurance by the end of the month immediately following the application month, the application shall be denied and the individual will have to reapply during another open enrollment period.~~

~~—(3) The effective date of re-enrollment for a recertification in the Primary Care Network program [or the Covered at Work program] is the first day of the month after the recertification month, if the recertification is completed as described in R414-310-14(7).~~

~~[(4)](3) If the enrollee does not complete the recertification as described in R414-310-14(7), and the enrollee does not have good cause for missing the deadline, the case will remain closed and the individual may reapply during another open enrollment period.~~

~~[(5)](4) An individual found eligible for the Primary Care Network program [or the Covered at Work program] shall be eligible from the effective date through the end of the first month of eligibility and for the following 12 months. If the enrollee completes the ~~[redetermination]~~ recertification process in accordance with R414-310-14(7) and continues to be eligible, the recertification period will be for an additional 12 months beginning the month following the recertification month. Eligibility could end before the end of a 12-month certification period for any of the following reasons:~~

~~(a) the individual turns age 65;~~

~~(b) the individual becomes entitled to receive student health insurance, Medicare, or becomes covered by Veterans Administration Health Insurance;~~

~~(c) the individual dies;~~

~~(d) the individual moves out of state or cannot be located;~~

~~(e) the individual enters a public institution or an Institute for Mental Disease.~~

~~[(6) If an individual on the Covered at Work program voluntarily discontinues enrollment in employer sponsored~~

~~insurance coverage, eligibility for the Covered at Work program ends. If the enrollment in employer sponsored insurance is discontinued involuntarily and the individual notifies the local office within 10 calendar days of when the insurance ends, the individual may switch to the PCN program for the remainder of the certification period.~~

~~—(7)](5) An individual enrolled in the Primary Care Network program loses eligibility when the individual enrolls in any type of group health plan or other creditable health insurance coverage including an employer-sponsored [coverage] health plan, except under the following circumstances:~~

~~(a) An individual who gains access to or enrolls in an employer-sponsored health plan may switch to the [Covered at work] UPP program if the individual [reports to] notifies the local office [within 10 calendar days of enrolling in an employer-sponsored plan,] before the coverage in the employer-sponsored health plan begins, and if the requirements defined in R414-310-7(3)(b) ~~[or (c)]~~ are met.~~

~~(b) An individual who enrolls in the Utah Health Insurance Pool (H.I.P.) does not lose eligibility in the Primary Care Network.~~

~~[(8) An enrollee in the Primary Care Network who reports within 10 days that he or she has gained access to enroll in employer-sponsored coverage may either switch to the Covered at Work program. To switch to Covered at Work, the following requirements must be met:~~

~~—(a) The requirements of R414-310-7(3) must be met.~~

~~—(b) The individual must enroll in the employer-sponsored coverage and begin paying premiums for the insurance.~~

~~—(9)](6) If a Primary Care Network ~~[or Covered at Work]~~ case closes for any reason, other than to become covered by another Medicaid program, and remains closed for one or more calendar months, the individual must submit a new application to the local office during an enrollment period to reapply. The individual must meet all the requirements of a new applicant including paying a new enrollment fee.~~

~~[(10)](7) If a Primary Care Network ~~[or Covered at Work]~~ case closes because the enrollee is eligible for another Medicaid program, the individual may reenroll in the Primary Care Network ~~[or the Covered at Work]~~ program if there is no break in coverage between the programs, even if the State has stopped enrollment under R414-310-16(2).~~

~~(a) If the individual's 12-month certification period has not ended, the individual may reenroll for the remainder of that certification period. The individual is not required to complete a new application or have a new income eligibility determination. The individual must continue to meet the criteria defined in R414-310-7. The individual is not required to pay a new enrollment fee for the months remaining in the current certification period.~~

~~(b) If the 12-month certification period from the prior enrollment has ended, the individual may still reenroll in the Primary Care Network ~~[or the Covered at Work]~~ program. However, the individual must complete a new application, meet eligibility and income guidelines, and pay a new enrollment fee for the new certification period.~~

~~(c) If there is a break in coverage of one or more calendar months between programs, the individual must reapply during an open enrollment period for the Primary Care Network ~~[or the Covered at Work]~~ program.~~

~~—(11) Lifetime eligibility for benefits under the Covered at Work program is limited to 60 months for each enrollee.]~~

R414-310-16. Enrollment Limitation.

(1) The Department shall limit enrollment in the Primary Care Network program [~~and the Covered at Work program~~].

(2) The Department may stop enrollment of new individuals at any time based on availability of funds.

(3) The Department and local offices shall not accept applications nor maintain waiting lists during a time period that enrollment of new individuals is stopped.

(4) If enrollment has not been stopped, individuals may apply for the Primary Care Network program [~~or the Covered at Work program~~].

(5) An individual who becomes ineligible for Medicaid, or who must pay a spenddown or premium for Medicaid, but who was not previously enrolled in the Primary Care Network [~~or Covered at Work~~] program, may apply to enroll in the Primary Care Network [~~or the Covered at Work~~] program if the State has not stopped enrollment under R414-310-16(2). If enrollment has been stopped, the individual must wait for an open enrollment period to apply.

R414-310-18. Improper Medical Coverage.

(1) An individual who receives benefits under the Primary Care Network program [~~or the Covered at Work program~~] for which he is not eligible is responsible to repay the Department for the cost of the benefits received.

(2) An alien and the alien's sponsor are jointly liable for benefits received for which the individual was not eligible.

(3) An overpayment of benefits includes all amounts paid by the Department for medical services or other benefits on behalf of an enrollee or for the benefit of the enrollee during a time period that the enrollee was not actually eligible to receive such benefits.

KEY: Medicaid, primary care, covered-at-work, demonstration
Date of Enactment or Last Substantive Amendment: [December 16, 2004]2007
Authorizing, and Implemented or Interpreted Law: 26-18-1; 26-1-5; 26-18-3



Health, Health Systems Improvement,
 Licensing
R432-2-6
 Application

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE No.: 29750
 FILED: 03/29/2007, 13:55

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment will specify the licensing requirement changes for new nursing homes, that were made by H.B. 369 during the 2007 Legislative session. (DAR NOTE: H.B. 369 (2007) is found at Chapter 24, Laws of Utah 2007, and was effective 02/28/2007.)

SUMMARY OF THE RULE OR CHANGE: The rule change specifies that the requirements of Subsection 26-21-23(5)(a) will be met if a notice of intent or application was filed with the Department with a related fee prior to 03/01/2007. It also specifies the requirements that a nursing care facility must meet in order to submit working drawings that are associated with the application process.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 26-21-23(4)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This rule does not affect any part of the state budget. No impact is expected.
- ❖ LOCAL GOVERNMENTS: This rule does not affect any part of local government budgets. No impact is expected.
- ❖ OTHER PERSONS: This rule amendment will define which prospective health care providers will be able to continue with the licensing process of nursing facilities in lieu of the legislative amendments to Title 26, Chapter 21. Some providers with significant investments will be allowed to continue licensure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no added compliance costs for this rule amendment. The providers that will continue with licensing of nursing facilities will not have any new requirements added.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will implement H.B. 369 passed in the 2007 Legislature. The fiscal impact of this rule is positive to allow those facilities that H.B. 369 intended to be allowed to proceed with construction to be protected. David N. Sundwall, MD, Executive Director

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

HEALTH
 HEALTH SYSTEMS IMPROVEMENT, LICENSING
 CANNON HEALTH BLDG
 288 N 1460 W
 SALT LAKE CITY UT 84116-3231, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Joel Hoffman at the above address, by phone at 801-538-6165, by FAX at 801-538-6163, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2007

AUTHORIZED BY: David N. Sundwall, Executive Director

R432. Health, Health Systems Improvement, Licensing.**R432-2. General Licensing Provisions.****R432-2-6. Application.**

(1) An applicant for a license shall file a Request for Agency Action/License Application with the Utah Department of Health on a form furnished by the Department.

(2) Each applicant shall comply with all zoning, fire, safety, sanitation, building and licensing laws, regulations, ordinances, and codes of the city and county in which the facility or agency is located. The applicant shall obtain the following clearances and submit them as part of the completed application to the licensing agency:

(a) A certificate of fire clearance from the State Fire Marshal or designated local fire authority certifying compliance with local and state fire codes is required with initial and renewal application, change of ownership, and at any time new construction or substantial remodeling has occurred.

(b) A satisfactory Food Services Sanitation Clearance report by a local or state sanitarian is required for facilities providing food service at initial application and upon a change of ownership.

(c) Certificate of Occupancy from the local building official at initial application, change of location and at the time of any new construction or substantial remodeling.

(3) The applicant shall submit the following:

(a) a list of all officers, members of the boards of directors, trustees, stockholders, partners, or other persons who have a greater than 25 percent interest in the facility;

(b) the name, address, percentage of stock, shares, partnership, or other equity interest of each person; and

(c) a list, of all persons, of all health care facilities in the state or other states in which they are officers, directors, trustees, stockholders, partners, or in which they hold any interest;

(4) The applicant shall provide the following written assurances on all individuals listed in R432-2-6(3):

(a) None of the persons has been convicted of a felony;

(b) None of the persons has been found in violation of any local, state, or federal law which arises from or is otherwise related to the individual's relationship to a health care facility; and

(c) None of the persons who has currently or within the five years prior to the date of application had previous interest in a licensed health care facility that has been any of the following:

(i) subject of a patient care receivership action;

(ii) closed as a result of a settlement agreement resulting from a decertification action or a license revocation;

(iii) involuntarily terminated from participation in either Medicaid or Medicare programs; or

(iv) convicted of patient abuse, neglect or exploitation where the facts of the case prove that the licensee failed to provide adequate protection or services for the person to prevent such abuse.

(5) An applicant or licensee shall submit a feasibility study as part of its application for a license for a new facility or agency or for a new license for an increase in capacity at a health care facility or expansion of the areas served by an agency.

(a) The feasibility study shall be a written narrative and provide at a minimum:

(i) the purpose and proposed license category for the proposed newly licensed capacity;

(ii) a detailed description of the services to be offered;

(iii) identification of the operating entity or management company;

(iv) a listing of affiliated health care facilities and agencies in Utah and any other state;

(v) identification of funding source(s) and an estimate of the total project capital cost;

(vi) an estimate of total operating costs, revenues and utilization statistics for the twelve month period immediately following the licensing of the new capacity;

(vii) identification of all components of the proposed newly licensed capacity which ensures that residents of the surrounding area will have access to the proposed facility or service;

(viii) identification of the impact of the newly licensed capacity on existing health care providers; and

(ix) a list of the type of personnel required to staff the newly licensed capacity and identification of the sources from which the facility or agency intends to recruit the required personnel.

(b) The applicant or licensee shall submit the feasibility study no later than the time construction plans are submitted. If new construction is not anticipated, the applicant or licensee shall submit the study at least 60-days prior to beginning the new service. The applicant shall provide a statement with the feasibility study indicating whether it claims business confidentiality on any portion of the information submitted and, if it does claim business confidentiality, provide a statement meeting the requirements of Utah Code section 63-2-308.

(c) The Department shall publish public notice, at the applicant's expense, in a newspaper in general circulation for the location where the newly licensed capacity will be located that the feasibility study has been completed. The Department shall accept public comment for 30 days from initial publication. The Department shall retain the feasibility study and make it available to the public.

(d) The Department shall review the feasibility study, summarize the public comment, review demographics of the geographic area involved and prepare a written evaluation to the applicant regarding the viability of the proposed program.

(6) The licensee may apply to designate any number of beds within the facility's licensed capacity as banked beds on a form provided by the Department.

(a) The licensee may apply to designate beds as banked no later than December 1st of each year or upon application for license renewal.

(b) The Department shall thereafter show the facility as having an operational bed capacity equal to the licensed capacity minus any beds banked by the facility.

(c) Banking beds shall not alter the licensed capacity of a facility.

(7) The licensee may apply to return any number of banked beds to operational bed capacity on a form provided by the Department.

(a) The licensee may apply to return banked beds to operational capacity no later than December 1 of each year or upon application for license renewal.

(b) The Department shall thereafter show the facility as having an operational bed capacity equal to the licensed capacity minus any beds still banked by the facility.

(c) Beds previously banked that have been returned to operational capacity must meet the construction and life safety codes that were applicable to the facility at the time the beds were last banked.

(8) The requirements contained in Utah Code Section 26-21-23(5)(a) shall be met if a nursing care facility filed a notice of intent or application with the Department and paid a fee relating to a proposed nursing care facility prior to March 1, 2007.

(9) The requirements contained in Utah Code Section 26-21-23(5)(b) shall be met if a nursing care facility complies with the requirements of R432-4-14(4) and R432-4-16 on or before July 1, 2008.

KEY: health care facilities

Date of Enactment or Last Substantive Amendment: ~~March 28,~~ 2007

Notice of Continuation: January 5, 2004

Authorizing, and Implemented or Interpreted Law: 26-21-9; 26-21-11; 26-21-12; 26-21-13

Insurance, Administration

R590-93

Replacement of Life Insurance and Annuities

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29752

FILED: 03/30/2007, 08:54

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule was changed to comply with legislation passed in the 2007 general session, H.B. 295, which increased the free-look time period on replacement life policies. At the same time the department has made further clean-up and clarification changes to the rule. (DAR NOTE: H.B. 295 (2007) is found at Chapter 307, Laws of Utah 2007, and will be effective 04/30/2007.)

SUMMARY OF THE RULE OR CHANGE: Subsection R590-93-2(2) is being added to describe the scope of the rule. In Subsection R590-93-2(3)(d), a phrase is added that exempts from the rule those transactions when a term conversion is exercised among corporate affiliates, which could be a benefit for consumers if the affiliated company specializes in Term insurance. In Subsection R590-93-3(6), the last incorporation date of Appendix A and C is updated. In Subsections R590-93-4(1) and R590-93-5(3), the requirement that the producer sign a statement along with the applicant as to whether the applicant "has existing policies or contracts" is deleted. The one who knows the answer is the applicant, who is the only one who needs to be asked. In Subsection R590-93-4(2) and R590-93-8(2)(a), the language requiring the filing of the Replacement Notice, or a similar form, to be approved by the commissioner is eliminated. This form is to be filed but not approved by the department. In Subsection R590-93-6(1)(e), changes the free look period from 20 to 30 days as required by this year's legislation. In Subsection R590-93-7(2), clarifies the time period for writing to the policyholder. The second addition clarifies the information to be sent. Subsection R590-93-7(3) has been rewritten for reasons of clarity. Subsection R590-93-9(1)(b) is being changed to comply more closely with questions in the application. The application asks whether there is existing insurance, not about the possibility of financing or replacement. Section R590-93-12 eliminates an old enforcement date and adds the number of days after the rule is made effective that the new language of the rule will begin to be enforced.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-23a-402

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Appendix A and Appendix C, Important Notice: Replacement of Life Insurance or Annuities; and Appendix B, Notice Regarding Replacement, from the National Association of Insurance Commissioners, 2006 ed.

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** Insurers who do not already include a 30-day free-look period on their life forms will be required to re-file them with the department, which will create a small increase in department workload. There will be no change in fees received by the department.

❖ **LOCAL GOVERNMENTS:** These changes will have no effect on local governments since they deal solely with the department's relationship with their licensees.

❖ **OTHER PERSONS:** Life insurers not already providing a 30-day minimum free-look period will need to update their policies and forms, and re-submit them to the department. No additional fees will be required of life insurers. There will be no financial impact on life insurance consumers except they will have more time to return a policy if they are not happy.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Life insurers not already providing a 30 day minimum free look period will need to update their policies and forms, and re-submit them to the department. No additional fees will be required of life insurers. There will be no financial impact on life insurance consumers except they will have more time to return a policy if they are not happy.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will have a minimal fiscal impact on life insurers, of which there are about 540 who do business in Utah. D. Kent Michie, Commissioner

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2007

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-93. Replacement of Life Insurance and Annuities.

R590-93-2. Purpose and Scope.

(1) The purpose of this rule is:

(a) to regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities; and

(b) to protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions. It will:

(i) assure that purchasers receive information with which a decision can be made in the purchaser's own best interest;

(ii) reduce the opportunity for misrepresentation and incomplete disclosure; and

(iii) establish penalties for failure to comply with requirements of this rule.

(2) This rule applies to all insurers and producers doing life insurance and annuity transactions in this state.

(3) Unless otherwise specifically included, this rule shall not apply to transactions involving:

(a) credit life insurance;

(b) group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct response solicitation shall be subject to the provisions of Section R590-93-8;

(c) group life insurance and annuities used to fund prearranged funeral contracts;

(d) an application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner or when a term conversion privilege is exercised among corporate affiliates;

(e) proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

(f)(i) policies or contracts used to fund:

(A) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(B) a plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

(C) a governmental or church plan defined in Section 414, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or

(D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(ii) Notwithstanding Subsection (i), this rule shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurer has been notified that plan participants may choose from among two or more insurers and there is a direct solicitation of an individual employee by an insurance

producer for the purchase of a contract or policy. As used in this subsection, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee;

(g) where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;

(h) existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed;

(i) immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this rule; or

(j) structured settlements.

(~~3~~4) Registered contracts shall be exempt from the requirements of Subsections R590-93-6(1)(c) and R590-93-7(2) with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

R590-93-3. Definitions.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule.

(1) "Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet or other mass communication media.

(2) "Existing insurer" means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of "replacement."

(3) "Existing policy or contract" means an individual life insurance policy, herein referred to as policy, or annuity contract, herein referred to as contract, in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.

(4) "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy. For purposes of a regulatory review of an individual transaction only, if a withdrawal, surrender or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four months before or 13 months after the effective date of the new policy, it will be deemed prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in Subsection R590-93-5(1)(e).

(5) "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years as defined in R590-177, Life Insurance Illustrations Rule.

(6) "Notice" means Appendix A and Appendix C, Important Notice: Replacement of Life Insurance or Annuities, and Appendix B, Notice Regarding Replacement, from the National Association of Insurance Commissioners, dated ~~2000~~2006 and which are incorporated herein by reference. The notice is to be made available by the replacing insurer and must be imprinted with the name, address, and telephone number of the replacing insurer.

(7)(a) "Policy summary" for policies or contracts other than universal life policies, means a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information:

- (i) current death benefit;
- (ii) annual contract premium;
- (iii) current cash surrender value;
- (iv) current dividend;
- (v) application of current dividend; and
- (vi) amount of outstanding loan.

(b) "Policy summary" for universal life policies, means a written statement that shall contain at least the following information:

- (i) the beginning and end date of the current report period;
- (ii) the policy value at the end of the previous report period and at the end of the current report period;
- (iii) the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type, e.g., interest, mortality, expense and riders;
- (iv) the current death benefit at the end of the current report period on each life covered by the policy;
- (v) the net cash surrender value of the policy as of the end of the current report period; and
- (vi) the amount of outstanding loans, if any, as of the end of the current report period.

(8) "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.

(9) "Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

(10) "Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

- (a) lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
- (b) converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
- (c) amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
- (d) reissued with any reduction in cash value; or
- (e) used in a financed purchase.

(11) "Sales material" means a sales illustration and any other written, printed or electronically presented information created, or completed or provided by the company or producer and used in the presentation to the policy or contract holder related to the policy or contract purchased.

R590-93-4. Duties of Producers.

(1) A producer who initiates an application shall submit to the insurer, with or as part of the application, a statement signed by ~~both~~ the applicant ~~and the producer~~ as to whether the applicant has existing policies or contracts. If the answer is "no," the producer's duties with respect to replacement are complete.

(2) If the applicant answered "yes" to the question regarding existing coverage referred to in Subsection (1), the producer shall present and read to the applicant, not later than at the time of taking the application, the Notice regarding replacements in the form as described

in Appendix A or other substantially similar ~~[form approved by]~~ document filed with the commissioner. However, ~~[no approval]~~ filing shall not be required when amendments to the Notice are limited to the omission of references not applicable to the product being sold or replaced. The Notice shall be signed by both the applicant and the producer attesting that the Notice has been read aloud by the producer or that the applicant did not wish the Notice to be read aloud, in which case the producer need not have read the Notice aloud, and left with the applicant. With respect to an electronically completed application and Notice, the producer is not required to leave a copy of the electronically completed Notice with the applicant.

(3) The Notice shall list each existing policy or contract contemplated to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(4) In connection with a replacement transaction the producer shall leave with the applicant at the time an application for a new policy or contract is completed the original or a copy of all sales material. With respect to electronically presented sales material, it shall be provided to the policy or contract holder in printed form no later than at the time of policy or contract delivery.

(5) Except as provided in Subsection R590-93-6(3), in connection with a replacement transaction the producer shall submit to the insurer to which an application for a policy or contract is presented, a copy of each document required by this section, a statement identifying any preprinted or electronically presented company approved sales materials used, and copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased.

R590-93-5. Duties of Insurers that Use Producers.

Each insurer shall:

(1) maintain a system of supervision and control to insure compliance with the requirements of this rule that shall include at least the following:

(a) inform its producers of the requirements of this rule and incorporate the requirements of this rule into all relevant producer training manuals prepared by the insurer;

(b) provide to each producer a written statement of the company's position with respect to the acceptability of replacements providing guidance to its producer as to the appropriateness of these transactions;

(c) a system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with Subsection (b) above;

(d) procedures to confirm that the requirements of this rule have been met;

(e) procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or producer. Compliance with this rule may include, but shall not be limited to, systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring;

(2) have the capacity to monitor each producer's life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, and make such records available to the department. The capacity to monitor shall include the ability to produce records for each producer's:

- (a) life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;
 - (b) number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;
 - (c) annuity contract replacements as a percentage of the producer's total annual annuity contract sales;
 - (d) number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by Subsection R590-93-5(1)(e); and
 - (e) replacements, indexed by replacing producer and existing insurer;
- (3) require with or as a part of each application for life insurance or an annuity a signed statement by ~~both~~ the applicant ~~and the producer~~ as to whether the applicant has existing policies or contracts;
- (4) require with each application for life insurance or annuity that indicates an existing policy or contract, a completed Notice regarding replacements as contained in Appendix A;
- (5) when the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material required by Subsection R590-93-4(5), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the producer's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract;
- (6) ascertain that the sales material and illustrations required by Subsection R590-93-4(5) of this rule meet the requirements of this rule and are complete and accurate for the proposed policy or contract;
- (7) if an application does not meet the requirements of this rule, notify the producer and applicant and fulfill the outstanding requirements; and
- (8) maintain records in any media or by any process that accurately reproduces the actual document.

R590-93-6. Duties of Replacing Insurers that Use Producers.

- (1) Where a replacement is involved in the transaction, the replacing insurer shall:
- (a) verify that the required forms are received and are in compliance with this rule;
 - (b) with respect to an electronically completed Notice, the replacing insurer shall send a printed copy of the electronically executed Notice to the applicant within five working days of the date the Notice is received by the company;
 - (c) notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or the policy summary for the proposed policy or disclosure document for the proposed contract within five business days of a request from an existing insurer;
 - (d) be able to produce copies of the notification regarding replacement required in Subsection R590-93-4(2), indexed by producer, for at least five years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and
 - (e) provide to the policy or contract holder notice of the right to return the policy or contract within ~~29~~30 days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it; such notice may be included in Appendix A

or C. This subsection does not preempt the requirements of 31A-22-423.

(2) In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide periods up to the face amount of the existing policy or contract. With regard to financed purchases the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

(3) If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to Subsection R590-93-4(5) with regard to sales materials, the insurer may:

- (a) require with each application a statement signed by the producer that:
 - (i) represents that the producer used only company-approved sales material; and
 - (ii) states that copies of all sales material were left with the applicant in accordance with Subsection R590-93-4(4); and
- (b) within ten days of the issuance of the policy or contract:
 - (i) notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant in accordance with Subsection R590-93-4(4);
 - (ii) provide the applicant with a toll free number to contact company personnel involved in the compliance function if such is not the case; and
 - (iii) stress the importance of retaining copies of the sales material for future reference; and
- (c) be able to produce a copy of the letter or other verification in the policy file for at least five years after the termination or expiration of the policy or contract.

R590-93-7. Duties of the Existing Insurer.

Where a replacement is involved in the transaction, the existing insurer shall:

- (1) retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later;
- (2) within 5 days of a replacement notification send a letter to the policy or contract holder of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced. The policy or contract information shall be provided within five business days of receipt of the request from the policy or contract holder; and
- (3) upon receipt of a request to borrow, surrender or withdraw any policy values, send a notice, advising the policy holder that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent ~~[separate from the check]~~directly to the policyholder if the check is sent to anyone other than the policyholder. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

R590-93-8. Duties of Insurers with Respect to Direct Response Solicitations.

(1) In the case of an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, the Notice regarding replacement in Appendix B, or other substantially similar form approved by the commissioner.

(2) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

(a) provide to applicants or prospective applicants with the policy or contract a Notice, as described in Appendix C, or other substantially similar ~~[form approved by]~~ document filed with the commissioner. In these instances the insurer may delete the references to the producer, including the producer's signature, and references not applicable to the product being sold or replaced, without having to ~~[obtain approval of]~~ file the ~~[form]~~ document ~~[from]~~ with the commissioner. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the Notice referred to in this subsection. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed Notice referred to in this section; and

(b) comply with the requirements of Subsection R590-93-6(1)(c), if the applicant furnishes the names of the existing insurers, and the requirements of Subsections R590-93-6(1)(d), R590-93-6(1)(e), and R590-93-6(2).

R590-93-9. Violations and Penalties.

(1) Any failure to comply with this rule shall be considered a violation of 31A-23a-402. Examples of violations include:

(a) any deceptive or misleading information set forth in sales material;

(b) failing to ask the applicant in completing the application the pertinent question[s] regarding ~~[the possibility of financing or replacement]~~ existing policies or contracts;

(c) the intentional incorrect recording of an answer;

(d) advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or

(e) advising a policy or contract holder to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company.

(2) Policy and contract holders have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract holders of the same producer shall be deemed prima facie evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the producer's intent to violate this rule.

(3) Where it is determined that the requirements of this rule have not been met, the replacing insurer shall provide to the policy holder an in force illustration if available or a policy summary for the

replacement policy or disclosure document for the replacement contract and the appropriate Notice regarding replacements in Appendix A or C.

(4) Violations of this rule shall subject the violators to penalties that may include the revocation or suspension of a producer's or company's license, monetary fines and the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred. In addition, where the commissioner has determined that the violations were material to the sale, the insurer may be required to make restitution, restore policy or contract values and pay interest at the legal rate as provided in Title 15 of the Utah Code on the amount refunded in cash.

R590-93-12. Enforcement Date.

The commissioner will begin enforcing this rule ~~[September 1, 2005]~~ 45 days after the effective date.

KEY: life insurance, annuity replacement

Date of Enactment or Last Substantive Amendment: ~~[June 8, 2005]~~ 2007

Notice of Continuation: April 28, 2004

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-402

◆ ————— ◆

Labor Commission, Safety

R616-1

Coal Mine Rules

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 29733

FILED: 03/26/2007, 15:05

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose for repealing and reenacting this rule is to remove antiquated provisions and to reorganize and update standards for certifying the qualifications of individuals working as underground mine foreman, surface mine foreman, fire boss, underground electrician, or surface electrician in coal mines, gilsonite mines, or other hydrocarbon mines in Utah, as required by Section 40-2-1.1 et seq.

SUMMARY OF THE RULE OR CHANGE: The substantive differences between the repealed rule and the reenacted rule can be summarized as follows: the reenacted rule omits the obsolete references to safety inspections that are contained in the repealed rule. The safety inspections in question are no longer authorized by state statute and are now conducted by the federal Mine Safety and Health Administration. The reenacted rule also omits unnecessary provisions from the repealed rule that duplicate statutory provisions of the Utah Administrative Procedures Act. The reenacted rule also clarifies rules governing the certification of individuals working in key safety-related positions in coal mines, gilsonite and other hydrocarbon mines.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-2-1

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 30 CFR 1 through 199, Federal Underground Coal Mine Safety Standards, 11th ed., July 1, 1996

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--The Labor Commission has previously required applicants to pay a fee to cover the cost of administering the testing and certification process; this fee has been subject to legislative approval. This rule makes no change to this existing process and will not increase or decrease the amount of fees received by the Commission.
- ❖ LOCAL GOVERNMENTS: None--Local governments are not subject to or otherwise affected by this rule.
- ❖ OTHER PERSONS: None--The Labor Commission has previously required applicants to pay a fee to cover the cost of administering the testing and certification process; this fee has been subject to legislative approval. This rule makes no change to this existing process and will not increase or decrease the amount of fees paid by other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule continues the requirement that each applicant pay a fee to take the certification exam. The fee is currently set at \$50 for the initial exam and an additional fee of \$20 per section, not to exceed a total of \$50, is charged for repeat examinations. The total amount paid by all such applicants has been approximately \$21,000 per year.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Commission's coal miner certification program is necessary to provide qualified staff for key mine safety positions. The program is required by the federal Mine Safety and Health Administration. By providing guidance for the Commission's certification program, this rule supports the coal mining industry and has an intangible but generally favorable fiscal impact on businesses engaged in coal mining. Sherrie Hayashi, Commissioner

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Pete Hackford at the above address, by phone at 801-530-7605, by FAX at 801-530-6390, or by Internet E-mail at phackford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2007

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R616. Labor Commission, Boiler and Elevator Safety.

R616-1. Coal, Gilsonite, or other Hydrocarbon Mining Certification[Coal Mine Rules].

[R616-1-1. Authority.

~~— This rule is established pursuant to Section 34A-1-104 and 40-2-1.1 for the purpose of the Labor Commission ascertaining, adopting, and enforcing reasonable standards and rules for the protection of life, health, and safety of all persons with respect to all coal prospects, mines, tunnels, banks, open cut workings, and coal strip mines in the State of Utah, regardless of the number of employees, lessors, owners, partners or sublessors.~~

R616-1-2. Definitions.

~~— A. "Commission" means the Labor Commission created in Section 34A-1-103.~~

~~— B. "Division" means the Division of Boiler and Elevator Safety of the Labor Commission.~~

~~— C. "Certification" means a person being judged competent and proficient in and receiving certification papers for a coal mining position by meeting prescribed standards established by the Division and the examining panel pursuant to the requirements in Sections 40-2-14 through 16.~~

R616-1-3. Variances to Rules.

~~— A. In a case where the Labor Commission finds that the enforcement of any rule would not materially increase the safety of employees and would work undue hardships on the operator, the Labor Commission may allow the mine a variance. Variances must be in writing to be effective, and can be revoked after reasonable notice is given in writing.~~

~~— B. No errors or omissions in these rules shall be construed as permitting any unsafe or unsanitary condition to exist.~~

R616-1-4. Inspection of Mines.

~~— A. It shall be the responsibility of the State Mine Inspectors of the Division to make inspections of coal mines operated within their districts when deemed necessary or appropriate. Inspectors shall examine conditions as regards the safety of the workforce, machinery, ventilation, drainage, methods of lighting, and into all other matters connected with the safety of persons in each mine, and when necessary give directions providing for the better health and safety of persons employed in or about the same. The owner or operator is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary. The owner or operator shall be notified of the condition of the mine by a written report.~~

~~— B. If the Division finds a Mine, or section thereof, or equipment therein, is not being operated in accordance with R616-1, the person in charge shall be notified and directed to make such improvements or changes as are necessary to comply, per Section 34A-2-301. If the improvements or changes are not made within the time established by the Division and fitting the conditions found, it shall be unlawful to operate the mine, or section thereof, or equipment therein, until the required changes are completed.~~

~~— C. If, in the judgment of a State Mine Inspector, the lives or safety of employees are, or will be endangered if they remain in a mine or section thereof, he shall direct that they be immediately withdrawn from the danger area.~~

R616-1-5. Fees.

— Fees to be charged as required by Section 40-2-15 shall be adopted by the Labor Commission and approved by the legislature pursuant to Section 63-38-3(2).

R616-1-6. Yearly Report.

— A. Coal mine operators shall forward to the Division at its office, not later than the 15th day of February, a detailed report on a form furnished by the Division, showing the character of the mine, tonnage of product during the previous year ended December 31, the average number of employees therein employed during the year including lessees, and number of days the mine was worked, and such other information as the Division and Commission may require. All such reports shall become part of the records of the office of the Commission.

— B. In the event that any mine is operated by two or more operators in any year, each operator must furnish the succeeding operator a report of his operations, which must be included with that of the party operating the mine at the end of the year so that a complete record of the mine's operations may be submitted to the Division.

R616-1-7. Code of Federal Regulations.

— A. The provisions of 30 CFR part 1 through 199, 1997, are incorporated by reference.

— B. Enforcement by the Division shall be pursuant to Section 40-2-1.5.

R616-1-8. Initial Agency Action.

— Issuance or denial of a certification of competency and orders or directives to make changes or improvements shall be issued by the mine inspector or examining panel referred to in Section 40-2-14 and are informal adjudicative actions commenced by the agency per Section 63-46b-3.

R616-1-9. Presiding Officer.

— The mine inspector or the examining are the presiding officers referred to in Section 63-46b-3. If an informal hearing is requested pursuant to R616-1-10, the Commission shall appoint the presiding officer for that hearing.

R616-1-10. Request for Informal Hearing.

— Within 30 days of issuance, any aggrieved person may request an informal hearing regarding the reasonableness of a certificate issuance or denial or an order to make changes or improvements. The request for hearing shall contain all information required by Sections 63-46b-3(a) and 63-46b-3(3).

R616-1-11. Classification of Proceeding for Purpose of Utah Administrative Procedures Act.

— Any hearing held pursuant to R616-1-10 shall be informal and pursuant to the procedural requirements of Section 63-46b-5 and any agency review of the order issued after the hearing shall be per Section 63-46b-13. An informal hearing may be converted to a formal hearing pursuant to Section 63-46b-4(3).]

R616-1-1. Authority and Purpose.

— This rule is established pursuant to Section 40-2-1.1 and Section 40-2-14, which authorize the Labor Commission to enact rules governing the certification of individuals to work in the positions of underground mine foreman, surface mine foreman, fire boss, underground electrician or surface electrician in coal mines, gilsonite mines or other hydrocarbon mines in Utah.

R616-1-2. Definitions.

— A. "Commission" means the Labor Commission created in Section 34A-1-103.

— B. "Division" means the Division of Boiler and Elevator Safety of the Labor Commission.

— C. "Certification" means a person being judged competent and qualified by the Division for a mining position identified in Section 40-2-15 by meeting standards established by the Division and the examining panel pursuant to the requirements in Sections 40-2-14 through 16.

R616-1-3. Fees.

— As required by Section 40-2-15, the Labor Commission shall establish and collect fees for certification sufficient to fund the Commission's miner certification process. The Commission's fees schedule shall be submitted to the Legislature for approval pursuant to Section 63-38-3(2).

R616-1-4. Code of Federal Regulations.

— The provisions of 30 CFR, sections 1 through 199, "Federal Underground Coal Mine Safety Standards," 11th ed., July 1, 1996, are hereby incorporated by reference.

R616-1-5. Initial Agency Action.

— Division action either granting or denying an applicant's application for certification are classified as informal adjudicative actions pursuant to Section 63-46b-4 of the Utah Administrative Procedures Act and shall be adjudicated accordingly.

KEY: certification, labor, mining

Date of Enactment or Last Substantive Amendment: [September 3, 1997]2007

Notice of Continuation: May 28, 2003

Authorizing, and Implemented or Interpreted Law: 34A-1-104; 40-2-1 et seq.



Natural Resources, Parks and
Recreation
R651-611-4
Special Fees

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29773

FILED: 04/02/2007, 15:47

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To better serve the needs of the recreating public and increase state revenue, two new golf passes would be added, i.e., one to Green River and Palisade State Park golf courses, an annual Youth Golf Pass, answering inquiries by the local community for a pass that could be used by youth 16 years and under in summer when school is out; and an annual Soldier Hollow Golf Club Pass that would add a business class pass to Wasatch Mountain State Park's fee schedule for golf.

SUMMARY OF THE RULE OR CHANGE: The annual Youth Golf Pass at Green River and Palisade State Park golf courses would add a new generation of customers to the sport of golf, thus increasing state revenue. The Soldier Hollow Golf Club Pass would allow resort or businesses to purchase passes for their members, opening a new market for golf, while utilizing excess capacity at Soldier Hollow Golf Course at Wasatch Mountain State Park.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63-11-17(8)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** After a season passes, the Division will have a much more accurate idea of how much change there will be, but it appears the changes will be \$15,000 for Palisade and Green River and \$10,000 for Soldier Hollow.

❖ **LOCAL GOVERNMENTS:** Maybe from the sale of golf balls, etc. but otherwise, there will be no anticipated cost or savings to local government.

❖ **OTHER PERSONS:** The cost to other persons would be \$150 for the annual Youth Golf Pass to golfers 16 years of age or younger. Those wishing to purchase a Soldier Hollow Golf Club Pass would pay \$1,000 per year (including cart rental) with unlimited play. Both passes would be nontransferable.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The purchaser would pay \$150 for the annual Youth Golf Pass. The purchaser would pay \$1,000 for the annual Soldier Hollow Golf Club Pass.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As this is the first season for these rule changes, there appears to be no impact on local businesses. Once a season is completed, the Division will have a better idea regarding impact on businesses. Michael Styler, Executive Director

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

**NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.**

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2007

AUTHORIZED BY: Mark Forbes, Deputy Director (Legislation)

R651. Natural Resources, Parks and Recreation.

R651-611. Fee Schedule.

R651-611-4. Special Fees.

- A. Golf Course Fees**
1. Palisade rental and green fees.
 - a. Nine holes general public - weekends and holidays - \$12.00
 - b. Nine holes weekdays (except holidays) - \$10.00
 - c. Nine holes Jr/Sr weekdays (except holidays) - \$8.00
 - d. 20 round card pass - \$160.00
 - e. 20 round card pass (Jr only) - \$100.00
 - f. Promotional pass - single person (any day) - \$450.00
 - g. Promotional pass - single person (weekdays only) - \$300.00
 - h. Promotional pass - couples (any day) - \$650.00
 - i. Promotional pass - family (any day) - \$850.00
 - j. Promotional pass - annual youth pass - \$150.00
 - ~~[j-]k.~~ Companion fee - walking, non -player - \$4.00
 - ~~[k-]l.~~ Motorized cart (18 holes) - \$10.00
 - ~~[l-]m.~~ Motorized cart (9 holes) - \$5.00
 - ~~[m-]n.~~ Pull carts (9 holes) - \$2.00
 - ~~[n-]o.~~ Club rental (9 holes) - \$5.00
 - ~~[o-]p.~~ School teams - No fee for practice rounds with coach and team roster. Tournaments are \$3.00 per player.
 - ~~[p-]q.~~ Driving range - small bucket - \$2.50
 - ~~[q-]r.~~ Driving range - large bucket - \$3.50
 2. Wasatch Mountain and Soldier Hollow rental and green fees.
 - a. Nine holes general public - \$12.50
 - b. Nine holes general public (weekends and holidays) - \$13.50
 - c. Nine holes Jr/Sr weekdays (except holidays) - \$11.00
 - d. 20 round card pass - \$220.00 - no holidays or weekends
 - e. Annual Promotional Pass (except holidays) - \$1,000.00
 - f. Business Class Membership Pass - \$1,000.00
 - ~~[f-]g.~~ Companion fee - walking, non-player - \$4.00
 - ~~[g-]h.~~ Motorized cart (9 holes - mandatory on Mt. course) - \$13.00
 - ~~[h-]i.~~ Motorized cart (9 holes single rider) - \$6.00
 - ~~[i-]j.~~ Pull carts (9 holes) - \$2.25
 - ~~[j-]k.~~ Club rental (9 holes) - \$6.00
 - ~~[k-]l.~~ School teams - No fee for practice rounds with coach and team roster (Wasatch County only). Tournaments are \$3.00 per player.
 1. Tournament fee (per player) - \$5.00
 - m. Driving range - small bucket - \$2.50
 - n. Driving range - large bucket - \$5.00
 - o. Advance tee time booking surcharge - \$15.00
 3. Green River rental and green fees.
 - a. Nine holes general public - \$10.00
 - b. Nine holes Jr/Sr weekdays (except holidays) - \$8.00
 - c. Eighteen holes general public - \$16.00
 - d. 20 round card pass - \$140.00
 - e. Promotional pass - single person (any day) - \$350.00
 - f. Promotional pass - personal golf cart - \$350.00
 - g. Promotional pass - single person (Jr/Sr weekdays) - \$275.00
 - h. Promotional pass - couple (any day) - \$600.00
 - i. Promotional pass - family (any day) - \$750.00
 - j. Promotional pass - annual youth pass - \$150.00
 - ~~[j-]k.~~ Companion fee - walking, non-player - \$4.00
 - ~~[k-]l.~~ Motorized cart (9 holes) - \$10.00
 - ~~[l-]m.~~ Motorized cart (9 holes single rider) - \$5.00
 - ~~[m-]n.~~ Pull carts (9 holes) - \$2.25
 - ~~[n-]o.~~ Club rental (9 holes) - \$5.00

[e]-p. School teams - No fee for practice rounds with coach and team roster. Tournaments are \$3.00 per player.

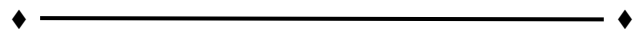
4. Golf course hours are daylight to dark
 5. No private, motorized golf carts are allowed, except where authorized by existing contractual agreement.
 6. Jr golfers are 17 years and under. Sr golfers are 62 and older.
- B. Boat Mooring and Dry Storage
1. Mooring Fees:
 - a. Day Use - \$5.00
 - b. Overnight Boat Parking - \$7.00 (until 8:00 a.m.)
 - c. Overnight Boat Camping - \$15.00 (until 2:00 p.m.)
 - d. Monthly - \$4.00/ft.
 - e. Monthly with Utilities - (Bear Lake) \$6.00/ft.
 - f. Monthly with Utilities - (Other Parks) \$5.00/ft.
 - g. Monthly Off Season - \$2.00/ft
 - h. Monthly (Off Season with utilities) - \$3.00/ft
 2. Dry Storage Fees:
 - a. Overnight (until 2:00 p.m.) - \$5.00
 - b. Monthly During Season - \$75.00
 - c. Monthly Off Season - \$50.00
 - d. Monthly (unsecured) - \$25.00
- C. Application Fees - Non -refundable PLUS Negotiated Costs.
1. Grazing Permit - \$20.00
 2. Easement - \$250.00
 3. Construction/Maintenance - \$50.00
 4. Special Use Permit - \$50.00
 5. Commercial Filming - \$50.00
 6. Waiting List - \$10.00
- D. Assessment and Assignment Fees.
1. Duplicate Document - \$10.00
 2. Contract Assignment - \$20.00
 3. Returned checks - \$20.00
 4. Staff time - \$40.00/hour
 5. Equipment - \$30.00/hour
 6. Vehicle - \$20.00/hour
 7. Researcher - \$5.00/hour
 8. Photo copy - \$.10/each
 9. Fee collection - \$10.00

KEY: parks, fees

Date of Enactment or Last Substantive Amendment: ~~January 4, 2006~~ **May 22, 2007**

Notice of Continuation: February 13, 2006

Authorizing, and Implemented or Interpreted Law: 63-11-17(8)



Natural Resources, Wildlife Resources

R657-53

Amphibian and Reptile Collection, Importation, Transportation, and Possession

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 29751
FILED: 03/29/2007, 15:41

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is to clarify procedures, standards, and requirements for the collection, importation, transportation, and possession of amphibians and reptiles.

SUMMARY OF THE RULE OR CHANGE: The revisions to this rule: 1) reorganize sections to make the rule more user-friendly; 2) create a pre-authorized Certificate of Registration; 3) create prohibited collection methods; 4) create a salvage provision; 5) create a handling provision; 6) create a propagation classification; 7) create possession limits; 8) make taxonomic changes; 9) make classification changes; 10) change importation and possession requirements; and 11) change propagation.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This rule clarifies the procedures, standards, and requirements for the collection, importation, transportation, and possession of amphibians and reptiles. The Division of Wildlife Resources (DWR) determines that by modifying the provisions regarding amphibians and reptiles does not create a cost or savings impact to the state budget or the DWR budget. However, DWR may incur a minimal cost for administering the pre-authorized Certificate of Registrations.

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

❖ **OTHER PERSONS:** This rule clarifies the procedures, standards, and requirements for the collection, importation, transportation, and possession of amphibians and reptiles. DWR determines that by modifying the provisions regarding amphibians and reptiles it does impose a minimal impact in requiring a pre-authorized Certificate of Registration however, it does not generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule clarifies the procedures, standards, and requirements for the collection, importation, transportation and possession of amphibians and reptiles. DWR determines these amendments to the rule does not create an additional compliance cost to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule provides clarification of the procedures, standards, and requirements for the collection, importation, transportation and possession of amphibians and reptiles. DWR determines that by modifying the provisions regarding amphibians and reptiles it does not create an impact on businesses. Michael Styler, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2007

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-53. Amphibian and Reptile Collection, Importation, Transportation and Possession.

R657-53-1. Purpose and Authority.

(1) Under Title 23, Wildlife Resources Code of Utah, this rule governs the collection, importation, ~~exportation,~~ transportation, ~~and~~ possession, and propagation of amphibians and reptiles.

(2) Nothing in this rule shall be construed as superseding the provisions set forth in Title 23, Wildlife Resources Code of Utah. Any provision of this rule setting forth a criminal violation that overlaps a section of that title is provided in this rule only as a clarification or to provide greater specificity needed for the administration of the provisions of this rule.

(3) In addition to this rule, additional regulation is provided in R657-40. Where a more specific provision has been adopted, that provision shall control.

(4) Specific dates, species, areas, number of pre-authorized certificates of registration, limits and other administrative details which may change annually are published in the proclamation of the Wildlife Board for amphibians and reptiles.

(5) Amphibians and reptiles lawfully collected from wild populations in Utah and thereafter possessed remain the property of the state for the life of the animal pursuant to Section 23-13-3. The state does not assert ownership interest in lawfully possessed, captive-bred amphibians and reptiles, but does retain jurisdiction to regulate the importation, ~~exportation,~~ possession, propagation and use of such animals pursuant to Title 23 of the Utah Code and this rule.

(~~5~~)6 This rule does not apply to division employees acting within the scope of their assigned duties.

R657-53-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and Subsection (2) through Subsection (~~25~~)29).

(2) "Amphibian" means animals from the Class of Amphibia, including hybrid species or subspecies of amphibians and viable embryos or gametes of species or subspecies of amphibians.

(3) "Captive-bred" means any legally ~~[-]~~obtained amphibian or reptile, for which [is born inside of and] fertilization and birth occurred in captivity, has spent its entire life in captivity, and is the offspring of legally obtained progenitors.

(4) "Certificate of registration" means a document issued under the Wildlife Resources Code, or any other rule or proclamation of the Wildlife Board granting authority to engage in activities not covered by a license, permit or tag.

(~~5~~) "Certificate of veterinary inspection" means an official health authorization issued by an accredited veterinarian required for the importation of an amphibian or reptile, as provided in Rule R58-1.

(~~5~~)6 "Collect" means to take, catch, capture, salvage, or kill any free~~[-]~~-roaming amphibian or reptile within Utah.

(~~6~~)7 "Commercial use" means any activity through which a person in possession of an amphibian or reptile:

(a) receives any consideration for the amphibian or reptile or for a use of the amphibian or reptile, including nuisance control; or

(b) expects to recover all or any part of the cost of keeping the amphibian or reptile through selling, bartering, trading, exchanging, breeding, or other use, including displaying the amphibian or reptile for entertainment, advertisement, or business promotion.

(~~7~~)8 "Controlled species" means a species or subspecies of amphibian or reptile that if taken from the wild, introduced into the wild, or held in captivity, poses a possible significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration is required.

(~~8~~)9 "Den" means any place where reptiles congregate for winter hibernation or brumation.

(~~9~~)10 "Educational use" means the possession and use of an amphibian or reptile for conducting educational activities concerning wildlife and wildlife-related activities.

(~~10~~)11 "Entry permit number" means a number issued by the state veterinarian's office to a veterinarian signing a certificate of veterinary inspection authorizing the importation of an amphibian or reptile into Utah.

(~~11~~)12 "Export" means to move or cause to move any amphibian or reptile from Utah by any means.

(~~12~~)13 "Import" means to bring or cause an amphibian or reptile to be brought into Utah by any means.

(~~13~~)14 "Legally obtained" means to acquire through collection, trade, barter, propagation or purchase with supporting written documentation, such as applicable certificate of registration, collection permit, license, or sales receipt in accordance with applicable laws. Documentation must include the date of the transaction; the name, address and phone number of the person or organization relinquishing the animal; the name, address and phone number of the person or organization obtaining the animal; the scientific name of the animal acquired; and a description of the animal.

(~~14~~)15 "Native species" means any species or subspecies of amphibian or reptile that historically occurred in Utah and has not been introduced by humans or migrated into Utah as a result of human activity.

(~~15~~)16 "Naturalized species" means any species or subspecies of amphibian or reptile that is not native to Utah but has established a wild, self-sustaining population in Utah.

(~~16~~)17 "Noncontrolled species" means a species or subspecies of amphibian or reptile that if taken from the wild, introduced into the wild, or held in captivity, poses no significant

detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration is not required, unless otherwise specified.

(17)18 "Nonnative species" means a species or subspecies of amphibian or reptile that is not native to Utah and has not established a wild, self-sustaining population in Utah.

(18)19 "Personal use" means the possession and use of an amphibian or reptile for a hobby or for its intrinsic pleasure and where no consideration for the possession or use of the animal is received by selling, bartering, trading, exchanging, breeding, or any other use.

(19)20 "Possession" means to physically retain or to exercise dominion or control over an amphibian or reptile.

(20)21 "Pre-authorized certificate of registration" means a certificate of registration that:

(a) meets the criteria established in Subsection R657-53-11(1)

(b) has been approved by the division; and

(c) is available for issuance.

(22) "Prohibited species" means a species or subspecies of amphibian or reptile that if taken from the wild, introduced into the wild, or held in captivity, poses a significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration shall only be issued in accordance with Sections R657-53-[14]23(1)(b) or R657-53-[27]-19.

(24)23 "Propagation" means the mating of a male and female amphibian or reptile in captivity.

(24) "Reptile" means animals from the Class of Reptilia, including hybrid species or subspecies of reptiles and viable embryos or gametes of species or subspecies of reptiles.

(22)25 "Scientific use" means the possession and use of an amphibian or reptile for conducting bona fide scientific research that is directly or indirectly beneficial to wildlife or the general public.

(23)26 "Transport" means to be moved or cause to be moved, any amphibian or reptile within Utah by any means.

(24)27 "Turtle" means all animals commonly known as turtles, tortoises and terrapins, and all other animals of the Order Testudinata, Class Reptilia.

(25)28 "Wild population" means native or naturalized amphibians or reptiles living in nature including progeny from a gravid female where fertilization occurred in the wild and birth occurred within six months of collection.

(29) "Wildlife Registration Office" means the division office in Salt Lake City responsible for processing applications and issuing certificates of registration.

R657-53-5. Collection, Importation, and Possession of Threatened and Endangered Species.

(1) Any amphibian or reptile [~~which has been~~] listed by the U.S. Fish and Wildlife Service as endangered or threatened pursuant to the federal Endangered Species Act is prohibited from collection, importation, possession, [~~and importation into Utah without first obtaining~~] or propagation except:

(a) The division may authorize the collection, importation, possession, or propagation of a threatened or endangered species under the criteria set forth in this rule for controlled species where the U.S. Fish and Wildlife Service has issued a permit or otherwise authorized the particular activity; or

(b) A person may import, possess, transfer, or propagate captive-bred eastern indigo snakes (*Drymarchon couperi*) without a certificate of registration [~~from the division and a federal permit~~

~~from] where the U.S. Fish and Wildlife Service has issued a permit or otherwise authorized the particular activity.~~

R657-53-8. Certificate of Registration Required.

(1)(a) A person shall obtain a certificate of registration before collecting, importing, transporting, [~~or~~] possessing, or propagating any amphibian or reptile or their parts [~~classified as prohibited or controlled~~] as provided in rule and the proclamations of the Wildlife Board for amphibians and reptiles, except as otherwise provided by the Wildlife Board or rules of the Wildlife Board.

(b) A certificate of registration is not required:

(i) to collect, import, transport, or possess any amphibian or reptile classified as noncontrolled, except as provided in Subsections R657-53-[18(3)]26(1)(c), R657-53-27(5) and R657-53-[19]28([5)(a)]7; or

(ii) to export any species or subspecies of amphibian or reptile from Utah, provided that the amphibian or reptile is held in legal possession and importation into the destination state is lawful.

(c) An application for an amphibian or reptile classified as prohibited shall not be accepted by the division without providing written justification describing how the applicant's proposed collection, importation, or possession of the amphibian or reptile meets the criteria provided in Subsections R657-53-[14]23(1)(b)a, R657-53-[16]24([4)c]([b])i or R657-53-[27]-19.

(d) Pre-authorized certificates of registration may be issued for collection and the resulting possession of amphibians and reptiles classified as controlled for collection pursuant to R657-53-13.

(2)(a) Certificates of registration expire as designated on the certificate of registration.

(b) Certificates of registration are not transferable [~~except as provided in Subsection (c) or as otherwise designated on the certificate of registration~~].

(c) [~~Upon the death of a certificate of registration holder, a legally obtained and possessed amphibian or reptile may pass to a successor, and a certificate of registration will be issued to the successor unless the amphibian or reptile poses a detrimental impact to community safety or the successor is unqualified to handle the amphibian or reptile.~~

[~~(d)~~] If the holder of a certificate of registration is a representative of an institution, organization, business, or agency, the certificate of registration shall end upon the representative's discontinuation of association with that entity.

[~~(e)~~d] Certificates of registration do not provide the holder with any rights of succession and any certificate of registration issued to a business or organization shall be void upon the termination of the business or organization or upon bankruptcy or transfer.

(3) The issuance of a certificate of registration automatically incorporates within its terms the conditions and requirements of this rule specifically governing the activity for which the certificate of registration is issued.

(4) In addition to this rule, the division may impose specific requirements on the holder of the certificate of registration necessary for the safe and humane handling and care of the amphibian or reptile.

(5)(a) Upon or before the expiration date of a certificate of registration, the holder must renew an existing or apply for a new certificate of registration to continue the activity.

(b) The division shall use the criteria provided in Section R657-53-11 in determining whether to issue a certificate of registration.

(c) If an application is not made by the expiration date, a live or dead amphibian or reptile held in possession under the expired certificate of registration shall be considered unlawfully held.

(d) If an application for a new certificate of registration is submitted before the expiration date, the existing certificate of registration shall remain valid while the application is pending.

(6) Failure to submit timely, accurate, or valid reports as required under this rule or the certificate of registration may disqualify a person from obtaining a new certificate of registration.

(7) A certificate of registration may be suspended as provided in Section 23-19-9 and Rule R657-26.

R657-53-10. Retroactive Effect on Possession.

(1) A person lawfully possessing an amphibian or reptile prior to the effective date of any species reclassification may receive a certificate of registration from the division for the continued possession of that amphibian or reptile where the amphibian or reptile's classification has changed hereunder from noncontrolled to controlled or prohibited, or from controlled to prohibited.

(2) The certificate of registration shall be obtained within six months of the reclassification, or possession of the amphibian or reptile thereafter shall be unlawful.

(3) The certificate of registration for a species where the classification has changed from noncontrolled to controlled shall be issued for the life of the animal.

(4) The certificate of registration for a species where the classification has changed from noncontrolled or controlled to prohibited shall be renewed annually for the life of the animal.

(5) The division may require annual reporting.

R657-53-11. Issuance Criteria.

(1) The following factors shall be considered before the division may issue a certificate of registration:

- (a) the health, welfare, and safety of the public;
- (b) the health, welfare, safety, and genetic integrity of wildlife and other animals; and
- (c) ecological and environmental impacts.

(2) In addition to the criteria provided in Subsection (1), the division shall use the following criteria for the issuance of a certificate of registration for a scientific use of an amphibian or reptile:

- (a) the validity of the objectives and design;
- (b) the likelihood the project will fulfill the stated objectives;
- (c) the applicant's qualifications to conduct the research, including the requisite education or experience;
- (d) the adequacy of the applicant's resources to conduct the study; and

(e) whether the scientific use is in the best interest of the amphibian or reptile, wildlife management, education, or the advancement of science without unnecessarily duplicating previously documented scientific research.

(3) In addition to the criteria provided in Subsection (1), the division may use the following criteria for the issuance of a certificate of registration for an educational use of an amphibian or reptile:

- (a) the objectives and structure of the educational program; and
- (b) whether the applicant has written approval from the appropriate official if the activity is conducted in a school or other educational facility.

(4) The division may deny issuing or reissuing a certificate of registration to any applicant, if:

(a) the applicant has violated any provision of Title 23, Utah Wildlife Resources Code, Administrative Code R657, a certificate of registration, an order of the Wildlife Board or any other law that, when considered with the functions and responsibilities of collecting, importing, possessing or propagating an amphibian or reptile, bears a reasonable relationship to the applicant's ability to safely and responsibly carry out such activities;

(b) the applicant has previously been issued a certificate of registration and failed to submit any report or information required by this rule, the division, or the Wildlife Board; or

(c) the applicant misrepresented or failed to disclose material information required in connection with the application.

(d) The division may deny issuing or renewing a certificate of registration to an applicant where holding the amphibian or reptile at the proposed location violates federal, state or local laws.

(5) If an application is denied, the division shall provide the applicant with written notice of the reasons for denial.

(6) An appeal of the denial of an application may be made as provided in Section R657-53-~~28~~20.

R657-53-12. Amendment to Certificate of Registration.

(1)(a) If material circumstances change, requiring a modification of the terms of the certificate of registration, the holder may request an amendment by submitting written justification and supporting information.

(b) The division may amend the certificate of registration or deny the request based on the criteria for initial applications provided in Section R657-53-11, and, if the request for an amendment is denied, shall provide the applicant with written notice of the reasons for denial.

(c) The division may charge a fee for amending the certificate of registration.

(d) An appeal of a request for an amendment may be made as provided in Section R657-53-~~28~~20.

(2) The division reserves the right to amend any certificate of registration for good cause upon notification to the holder and written findings of necessity.

(3)(a) Each holder of a certificate of registration shall notify the division within 30 days of any change in mailing address.

(b) An amphibian or reptile or activities authorized by a certificate of registration may not be held at any location not specified on the certificate of registration without prior written permission from the division.

R657-53-13. Pre-authorized Certificates of Registration for Personal Use.

(1) Pre-authorized certificates of registration may only be issued for collection and the resulting possession for personal use of amphibians and reptiles classified as controlled for collection, as provided in this rule and the proclamation of the Wildlife Board.

(2) Pre-authorized certificates of registration shall be held to all conditions established in R657-53-8.

(3)(a) The criteria established in R657-53-11(1) shall be utilized to determine if pre-authorized certificates of registration shall be approved and issued.

(b) The criteria shall be applied to all amphibians and reptiles classified as controlled for collection.

(c) Pre-authorized certificates of registration shall be approved and issued only when the R657-53-11(1) criteria have been evaluated by the division and issuance found consistent with the criteria.

(4)(a) Applications for pre-authorized certificates of registration are available from, and must be submitted to, the Wildlife Registration Office in Salt Lake City.

(i) Applications for pre-authorized certificates of registration shall be accepted during the second full week of January and must be received by the Salt Lake Office by 5 p.m. Friday of that week.

(ii) Applications received before the second full week in January will not be accepted.

(iii) If necessary, a drawing will be held for those species that have more applications than available pre-authorized certificates of registration.

(iv) Remaining pre-authorized certificates of registration will be available after the second full week of January on a first-come, first-served basis.

(v) A person may not apply for or obtain more than one pre-authorized certificate of registration for each available species in a calendar year.

(vi) If available, pre-authorized certificates of registration shall be issued within five business days beginning the Monday after the second full week in January.

(vii) Applications that are incomplete, completed incorrectly, or submitted without the appropriate fee or other required information may be rejected.

(b)(i) Legal tender in the correct amount must accompany the application.

(ii) The pre-authorized certificate of registration fee includes a nonrefundable handling fee.

(c) Applications for pre-authorized certificates of registration may be denied as provided in R657-53-11(4).

(5)(a) Pre-authorized certificates of registration are not transferable, nor may they be amended to change collection area, species, bag limits, or dates.

(b) A holder of a pre-authorized certificate of registration shall notify the division within 30 days of any change in mailing address.

(c) An amphibian or reptile, or activities authorized by a certificate of registration may not be held or conducted at any location not specified on the certificate of registration without prior written permission from the division.

(6) Specific dates, species, areas, number of pre-authorized certificates of registration approved, and bag limits shall be published in the proclamation of the Wildlife Board for amphibians and reptiles.

(7)(a) Holders of a pre-authorized certificate of registration must report collection success or lack thereof to the division before the expiration date of the pre-authorized certificate of registration.

(b) The division shall issue a possession certificate of registration for the amphibian or reptile collected under the pre-authorized certification of registration for the life of the animal.

(c) Annual reporting to the division on the status of the animal is required or the possession certificate of registration becomes invalid.

R657-53-14. Records and Reports.

(1)(a) From the date of issuance of the certificate of registration, the holder shall maintain complete and accurate records of any taking, possession, transportation, propagation, sale, purchase, barter, or importation pursuant to applicable sections of this rule or the certificate of registration.

(b) Records must be kept current and shall include the names, phone numbers, and addresses of persons with whom any amphibian

or reptile has been sold, bartered, or otherwise transferred or received, and the dates of the transactions.

(c) The records required under this section must be maintained for five years from the expiration date of the certificate of registration.

(2) Reports of activity must be submitted to the Wildlife Registration Office as specified on the certificate of registration.

[R657-53-14. Collection of a Live or Dead Amphibian or Reptile for Personal, Scientific, or Educational Use.

—(1) A person may collect a live or dead amphibian or reptile or their parts for a personal, scientific or educational use only as provided in Subsection (a) or (b):

—(a) Certificates of registration are not issued for the collection of any live or dead amphibian or reptile or their parts classified as prohibited for collection, except as provided in Subsection (b) and R657-53-27.

—(b) The division may issue a certificate of registration to a university, college, governmental agency, bona fide nonprofit institution, or a person involved in wildlife research to collect a live or dead amphibian or reptile classified as prohibited for collection if, in the opinion of the division, the scientific or educational use is beneficial to wildlife or significantly benefits the general public without material detriment to wildlife.

—(2) A certificate of registration is required for collecting any live or dead amphibian or reptile or their parts classified as controlled for collection, except as otherwise provided by the Wildlife Board.

—(3) A certificate of registration is not required for collecting a live or dead amphibian or reptile or their parts classified as noncontrolled for collection, except as provided in Subsections R657-53-18(3) and (4) and R657-53-19(5).

[R657-53-15. [Importation or Possession of a Live or Dead Amphibian or Reptile for Personal, Scientific, or Educational Use.

—(1) A person may import or possess a live or dead amphibian or reptile or their parts for a personal, scientific or educational use only as provided in Subsections (a) or (b):

—(a) Certificates of registration are not issued for the importation of any live or dead amphibian or reptile or their parts classified as prohibited for importation or for the possession of any live or dead amphibian or reptile or their parts classified as prohibited for possession, except as provided in Subsection (b) and R657-53-27.

—(b) The division may issue a certificate of registration to a university, college, governmental agency, bona fide nonprofit institution, or a person involved in wildlife research to import a live or dead amphibian or reptile classified as prohibited for importation or to possess a live or dead amphibian or reptile classified as prohibited for possession if, in the opinion of the division, the scientific or educational use is beneficial to wildlife or significantly benefits the general public without material detriment to wildlife.

—(2) A certificate of registration is required for importing any live or dead amphibian or reptile or their parts classified as controlled for importation or for possessing any live or dead amphibian or reptile or their parts classified as controlled for possession, except as otherwise provided by the Wildlife Board.

—(3) A certificate of registration is not required for importing a live or dead amphibian or reptile or their parts classified as

noncontrolled for importation or for possessing a live or dead amphibian or reptile or their parts classified as noncontrolled for possession, except as provided in Subsections R657-53-18(3) and (4) and R657-53-19(5).

—(4) Notwithstanding Subsection (1) or (2), a person may import or possess any dead amphibian or reptile or its parts classified as prohibited or controlled, except as provided in Section R657-53-5, for a personal use without obtaining a certificate of registration, provided the animal was legally taken, is held in legal possession, and a valid license, permit, tag, certificate of registration, bill of sale, or invoice is available for inspection upon request.

R657-53-16. Collection, Importation or Possession of a Live Amphibian or Reptile for a Commercial Use.

—(1) Pursuant to Sections 23-13-13 and 23-20-3, a person may not collect or possess a live amphibian or reptile for a commercial use or commercial venture for pecuniary gain, unless otherwise provided in this rule or a certificate of registration.

—(2)(a) A person may import a live amphibian or reptile classified as non-controlled for importation or may possess a live amphibian or reptile classified as non-controlled for possession, for a commercial use or a commercial venture, except as provided in Subsection (b).

—(b) A native or naturalized species of amphibian or reptile may not be sold or traded unless it originated from a captive-bred population.

—(c) Complete and accurate records for native or naturalized species must be maintained and available for inspection for five years from the date of the transaction, documenting the date, and the name, address, and telephone number of the person from whom the amphibian or reptile has been obtained.

—(d) Complete and accurate records must be maintained and available for inspection for five years from the date of the transfer, documenting the date, and the name, address and certificate of registration number of the person receiving the amphibian or reptile.

—(3)(a) A person may not import a live amphibian or reptile classified as controlled for importation or may not possess a live amphibian or reptile classified as controlled for possession for a commercial use or commercial venture without first obtaining a certificate of registration.

—(b) A certificate of registration will not be issued to sell or trade a native or naturalized species of amphibian or reptile unless it originates from a captive-bred population.

—(c) It is unlawful to transfer a live amphibian or reptile classified as controlled for possession to a person who does not have a certificate of registration to possess the amphibian or reptile, except as follows:

- (i) the amphibian or reptile is captive-bred;
- (ii) the transferee is not domiciled in Utah;
- (iii) the transferee is exporting the amphibian or reptile out of Utah; and
- (iv) the transferee follows the transport provisions in Section R657-53-20.

—(d) Complete and accurate records must be maintained by the buyer and the seller for five years from the date of the transaction or transfer, documenting the date, and the name, address, and telephone number of the person from whom the amphibian or reptile has been obtained and the person receiving the amphibian or reptile.

—(e) The records indicated in Subsection (d) must be made available for inspection upon request of the division.

—(4)(a) A certificate of registration will not be issued for importing a live amphibian or reptile, classified as prohibited for importation, or for possessing a live amphibian or reptile, classified as prohibited for possession, for a commercial use or commercial venture, except as provided in Subsection (b) or R657-53-27.

—(b) The division may issue a certificate of registration to a zoo, circus, amusement park, aviary, or film company to import or possess a live amphibian or reptile classified as prohibited for importation or possession if, in the opinion of the division, the importation or possession for a commercial use is beneficial to wildlife or significantly benefits the general public without material detriment to wildlife.

—(c) The division's authority to issue a certificate of registration to a zoo, circus, amusement park, or aviary under this Subsection is restricted to those facilities that keep the prohibited amphibian or reptile in a park, building, cage, enclosure or other structure for the primary purpose of public exhibition or viewing.

—(5) It is unlawful to sell or trade any turtle, including tortoises, less than 4" in carapace length.

R657-53-17. Collection, Importation or Possession of a Dead Amphibian or Reptile or Their Parts for a Commercial Use.

—(1) Pursuant to Sections 23-13-13 and 23-20-3, a person may not collect, import or possess any dead amphibian or reptile or its parts for a commercial use or commercial venture for pecuniary gain, unless otherwise provided in the rules and proclamations of the Wildlife Board, or a memorandum of understanding with the division.

—(2) The restrictions in Subsection (1) do not apply to a dead amphibian or reptile sold or traded for educational use.

R657-53-18. Classification and Specific Rules for Amphibians.

—(1) Amphibians are classified as follows:

—(a) American bullfrog, Ranidae Family (*Rana catesbeiana*) is prohibited for collection, importation and possession, except as provided in Subsection (5);

—(b) Clawed frog, Pipidae Family (*Xenopus*) (All species) is prohibited for collection, importation and possession;

—(c) Columbia spotted frog, Ranidae Family (*Rana luteiventris*) is prohibited for collection, importation and possession;

—(d) Green frog, Ranidae Family (*Rana clamitans*) is prohibited for collection, importation and possession, except as provided in Subsection (5);

—(e) Lowland leopard frog, Ranidae Family (*Rana yavapaiensis*) is prohibited for collection, importation and possession;

—(f) Northern leopard frog, Ranidae Family (*Rana pipiens*) is controlled for collection, importation and possession;

—(g) Pacific treefrog, Hylidae Family (*Pseudacris regilla* or *Hyla regilla*) is controlled for collection, importation and possession;

—(h) Relict leopard frog, Ranidae Family (*Rana onea*) is prohibited for collection, importation and possession;

—(i) Tiger salamander, Ambystomatidae Family (*Ambystoma tigrinum*) is controlled for importation, and noncontrolled for collection and possession as provided in Subsection (4);

—(j) Arizona toad, Bufonidae Family (*Bufo microscaphus*) is controlled for collection, importation and possession;

—(k) Cane (marine) toad, Bufonidae Family (*Bufo marinus*) is prohibited for collection, importation and possession; and

—(l) Western toad, Bufonidae Family (*Bufo boreas*) is prohibited for collection, importation and possession.

—(2) All species and subspecies of amphibians not listed in Subsection (1) are classified as noncontrolled for collection, importation and possession, except as provided in Subsection (3).

—(3) A person must obtain a certificate of registration to collect four or more amphibians of each species classified as noncontrolled within a calendar year, except as provided in Subsection (4) and (5).

—(4) A person may collect or possess for personal use up to 50 Tiger salamanders (*Ambystoma tigrinum*) without a certificate of registration.

—(5) A person may collect or possess any number of American bullfrogs (*Rana catesbeiana*) or Green frogs (*Rana clamitans*) without a certificate of registration provided they are either killed or released immediately upon removing them from the water. A person may not transport a live bullfrog or green frog from the water from which it was collected without first obtaining a certificate of registration.

R657 53 19. Classification and Specific Rules for Reptiles.

—(1) Reptiles are classified as follows:

—(a) Crocodiles are classified as follows:

—(i) Alligators and caimans, Alligatoridae Family (All species) are prohibited for collection, importation and possession;

—(ii) Crocodiles, Crocodylidae Family (All species) are prohibited for collection, importation and possession; and

—(iii) Gharial, Gavialidae Family (*Vavialis gangeticus*) is prohibited for collection, importation and possession.

—(b) Lizards are classified as follows:

—(i) Beaded lizard, Helodermatidae Family (*Heloderma horridum*) is prohibited for collection, importation, and possession;

—(ii) Chuckwalla, Iguanidae Family (*Sauromalus*) (All species) is prohibited for collection, and controlled for importation and possession;

—(iii) Common side-blotched lizard, Phrynosomatidae Family (*Uta stansburiana*) is noncontrolled for collection, importation and possession, except as provided in Subsection (5);

—(iv) Desert iguana, Iguanidae Family (*Dipsosaurus dorsalis*) is prohibited for collection, and controlled for importation and possession;

—(v) Desert night lizard, Xantusiidae Family (*Xantusia vigilis*) is controlled for collection, importation and possession;

—(vi) Gila monster, Helodermatidae Family (*Heloderma suspectum*) is prohibited for collection, importation and possession;

—(vii) Northern sagebrush lizard, Phrynosomatidae Family (*Sceloporus graciosus graciosus*) is noncontrolled for collection, importation and possession, except as provided in Subsection (5);

—(viii) Utah banded gecko, Gekkonidae Family (*Coleonyx variegatus utahensis*) is controlled for collection, importation and possession;

—(ix) Variable (many-lined) skink, Scincidae Family (*Eumeces multivirgatus epipleurotus*) is controlled for collection, importation and possession; and

—(x) Western zebra-tailed lizard, Phrynosomatidae Family (*Callisaurus draconoides rhodostictus*) is controlled for collection, importation and possession.

—(c) Snakes are classified as follows:

—(i) Bird Snake, Colubridae Family (*Thelotornis*) (All species) are prohibited for collection, importation and possession;

—(ii) Boomsnang, Colubridae Family (*Dispholidus typus*) is prohibited for collection, importation and possession;

—(iii) Burrowing asps, Atractaspidae Family (All species) are prohibited for collection, importation and possession;

—(iv) California kingsnake (black and white banded form), Colubridae Family (*Lampropeltis getula californiae*) is controlled for collection, and noncontrolled for importation and possession;

—(v) Desert glossy snake, Colubridae Family (*Arizona elegans eburnata*) is controlled for collection, importation and possession;

—(vi) Great Plains ratsnake, Colubridae Family (*Elaphe guttata emoryi*) is controlled for collection, importation and possession;

—(vii) Keelback, Colubridae Family (*Rhabdophis*) (All species) are prohibited for collection, importation and possession;

—(viii) Painted desert glossy snake, Colubridae Family (*Arizona elegans philipi*) is controlled for collection, importation and possession;

—(ix) Pit vipers, Viperidae Family (All species, except *Crotalus viridis*) are prohibited for collection, importation and possession;

—(x) Proteroglyphous snakes, Australian spp., cobras, coral snakes, kraits, and their allies, Elapidae Family (All species) are prohibited for collection, importation and possession;

—(xi) Smith's (southwestern) black-headed snake, Colubridae Family (*Tantilla hobartsmithi*) is controlled for collection, importation and possession;

—(xii) Smooth greensnake, Colubridae Family (*Opheodrys vernalis*) is controlled for collection, importation and possession;

—(xiii) Sonoran lyresnake, Colubridae Family (*Trimorphodon biscutatus lambda*) is controlled for collection, importation and possession;

—(xiv) Terrestrial gartersnake, Colubridae Family (*Thamnophis elegans*) is noncontrolled for collection, importation and possession, except as provided in Subsection (5);

—(xv) Utah milksnake, Colubridae Family (*Lampropeltis triangulum taylori*) is prohibited for collection, importation and possession;

—(xvi) Utah mountain kingsnake, Colubridae Family (*Lampropeltis pyromelana infralabialis*) is prohibited for collection, importation and possession;

—(xvii) Utah threadsnake (blindsnake), Leptotyphlopidae Family (*Leptotyphlops humilis utahensis*) is controlled for collection, importation and possession; and

—(xviii) Western rattlesnake, Viperidae Family (*Crotalus viridis*) is controlled for collection, prohibited for importation, and controlled for possession, as provided in Subsection (4).

—(d) Turtles are classified as follows:

—(i) Desert tortoise, Testudinidae Family (*Gopherus agassizii*) is prohibited for collection and importation, and controlled for possession;

—(ii) Snapping turtle, Chelydridae Family (All species) is prohibited for collection, importation and possession, except as provided in Subsection (6); and

—(iii) Spiny softshell, Trionychidae Family (*Apalone spinifera*) is prohibited for collection, importation and possession, except as provided in Subsection (6).

—(2) All species and subspecies of reptiles not listed in Subsection (1) are classified as noncontrolled for collection, importation and possession, except as provided in Subsection (5).

—(3) A person may not:

—(a) knowingly disturb the den of any reptile or kill, capture, or harass any reptile within 100 yards of a reptile den without first obtaining a certificate of registration from the division; or

—(b) indiscriminately kill any reptile.

—(4)(a) Western rattlesnakes, *Crotalus viridis*, may be killed without a certificate of registration only for reasons of human safety.

~~—(b) The carcass of a Western rattlesnake killed pursuant to Subsection (a) may be retained for personal use only.~~

~~—(5)(a) A person must obtain a certificate of registration to collect four or more reptiles of each species classified as noncontrolled within a calendar year, except as provided in Subsection (5)(b) and Subsection (6).~~

~~—(b) In a calendar year, a person may collect and possess for personal 25 common side-blotched lizards (*Uta stansburiana*), 25 northern sagebrush lizards (*Sceloporus graciosus graciosus*), and 25 terrestrial gartersnakes (*Thamnophis elegans*), without obtaining a certificate of registration.~~

~~—(6) A person may collect or possess any number of snapping turtles, *Chelydra serpentina*, or spiny softshell, *Apalone spinifera*, turtles without a certificate of registration provide they are either killed or released immediately upon removing them from the water. A person may not transport a live snapping turtle or spiny softshell turtle from the water from which it was collected without first obtaining a certificate of registration.~~

~~—(7) For purposes of this section, "white" means white and other non-yellow shades of white.~~

~~R657-53-20. Transporting a Live Amphibian or Reptile Through Utah.~~

~~—(1) Any controlled or prohibited amphibian or reptile may be transported through Utah without a certificate of registration if:~~

~~—(a) the amphibian or reptile remains in Utah no more than 72 hours; and~~

~~—(b) the amphibian or reptile is not sold, transferred, exhibited, displayed, or used for a commercial venture while in Utah.~~

~~—(2) Proof of legal possession must accompany the amphibian or reptile.~~

~~—(3) If delays in transportation arise, an extension of the 72 hours may be requested by contacting the Wildlife Registration Office in Salt Lake City.~~

~~R657-53-21. Importation of an Amphibian or Reptile into Utah.~~

~~—(1) A person may import any amphibian or reptile native to Utah that is classified as controlled or noncontrolled for importation, which has been legally obtained from outside the state of Utah.~~

~~—(2) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number before any amphibian or reptile may be imported into Utah.~~

~~R657-53-22.—[Transfer of Possession.~~

~~(1) Any person who lawfully possesses an amphibian or reptile classified as prohibited or controlled may transfer possession of that amphibian or reptile only to a person who has first applied for and obtained a certificate of registration for that amphibian or reptile from the division, except as provided in [Section R657-53-8(2)(e)]Subsection (3).~~

~~(2) The division may issue a certificate of registration granting the transfer and possession of [that]an amphibian or reptile only if the applicant/transferee meets the issuance criteria provided in Section R657-53-11.[~~

~~R657-53-23. Propagation of Amphibians or Reptiles.]~~

~~[(1) A person may propagate amphibians or reptiles that are legally obtained only as provided in Subsection (a) through (e)]3] Upon the death of a certificate of registration holder, a legally obtained and possessed amphibian or reptile may pass to a~~

successor, and a certificate of registration will be issued to the successor provided the amphibian or reptile poses no detrimental impact to community safety and the successor is qualified to handle the amphibian or reptile.

~~[(—(a) Certificates of registration are not issued for the propagation of any amphibian or reptile classified as prohibited for collection, importation or possession except as provided in R657-53-27.~~

~~—(b) A certificate of registration is required for propagating any amphibian or reptile classified as controlled for collection, importation or possession, except as otherwise provided by the Wildlife Board.~~

~~—(c)(i) A certificate of registration is required for propagating native or naturalized amphibians or reptiles classified as noncontrolled for collection, importation, or possession.~~

~~—(ii) A certificate of registration is not required for propagating nonnative amphibians or reptiles classified as noncontrolled for collection, importation or possession.~~

~~—(2) Certificates of registration may be issued to an applicant who:~~

~~—(a) is a resident of Utah;~~

~~—(b) agrees to provide and maintain suitable, disease free facilities and to humanely hold and maintain amphibians or reptiles in good condition;~~

~~—(c) has not been judicially or administratively found guilty of violating the provisions of this rule; and~~

~~—(d) has not been convicted of, pleaded no contest to, or entered into a plea in abeyance to any criminal offense that bears a reasonable relationship to the applicant's ability to safely and responsibly collect, import, transport or possess amphibians or reptiles.~~

~~—(3) Legally obtained amphibians or reptiles and their progeny and descendants born in captivity, which are held in possession under the authority of a certificate of registration, remain property of the holder, but are subject to regulation by the division in accordance with the needs for public health, welfare, and safety, and impacts on wildlife.~~

~~—(4)(a) A captive bred amphibian or reptile classified as prohibited or controlled for collection, importation or possession shall be marked for identification by a division representative.~~

~~—(b) Passive Integrated Transponders (PIT) tags shall be provided by the division.~~

~~—(c) PIT tags shall be inserted into amphibians or reptiles that meet or exceed the minimum size at which the PIT tag can be safely inserted into the amphibian or reptile.~~

~~—(d) A photograph may be used for identification, if photography is a viable option for identification, of a captive bred amphibian or reptile under the minimum size at which the PIT tag can be safely inserted into the amphibian or reptile until the amphibian or reptile meets or exceeds the minimum size at which the PIT tag can be safely inserted into the amphibian or reptile, at which time the division shall insert a PIT tag.~~

~~—(e) Accommodations for PIT tag insertion must be made with a division representative prior to PIT tag insertion.~~

~~R657-53-[24-]16. Violations.~~

~~(1) Any violation of this rule is a class C misdemeanor, as provided in Section 23-13-11.~~

~~(2) Nothing in this rule shall be construed to supersede any provision of Title 23, Wildlife Resources Code of Utah which establishes a penalty greater than a class C misdemeanor. Any~~

provision of this rule which overlaps a provision of that title is intended only as a clarification or to provide greater specificity needed for the administration of the provisions of this rule.

R657-53-~~25~~-17. Certification Review Committee.

(1) The division shall establish a Certification Review Committee which shall be responsible for:

- (a) reviewing:
 - (i) petitions to reclassify species and subspecies of amphibians or reptiles;
 - (ii) appeals of certificates of registration; and
 - (iii) requests for variances to this rule; and
 - (b) making recommendations to the Wildlife Board.
- (2) The committee shall consist of the following individuals:
- (a) the director or the director's designee who shall represent the director's office and shall act as chair of the committee;
 - (b) the chief of the Aquatic Section;
 - (c) the chief of the Wildlife Section;
 - (d) the chief of the ~~Public~~Administrative Services Section;
 - (e) the chief of the Law Enforcement Section;
 - ~~(f) the state veterinarian or his designee; and~~
 - ~~(f)g) a person designated by the Department of Health.~~

(3) The division shall require a fee for the submission of a request provided in Section R657-53-~~26~~18 and R657-53-~~27~~19.

R657-53-~~26~~-18. Request for Species Reclassification.

(1) A person may make a request to change the classification of a species or subspecies of amphibian or reptile provided in this rule.

(2) A request for reclassification must be made to the Certification Review Committee by submitting an application for reclassification.

- (3)(a) The application shall include:
- (i) the petitioner's name, address, and phone number;
 - (ii) the species or subspecies for which the application is made;
 - (iii) the name of all interested parties known by the petitioner;
 - (iv) the current classification of the species or subspecies;
 - (v) a statement of the facts and reasons forming the basis for the reclassification; and
 - (vi) copies of scientific literature or other evidence supporting the change in classification.

(b) In addition to the information required under Subsection (a), the petitioner must provide any information requested by the committee necessary to formulate a recommendation to the Wildlife Board.

(4)(a) The committee shall, within a reasonable time, consider the request for reclassification and shall submit its recommendation to the Wildlife Board.

(b) The committee shall send a copy of its recommendation to the petitioner and other interested parties specified on the application.

(5)(a) At the next available Wildlife Board meeting the Wildlife Board shall:

- (i) consider the committee recommendation; and
- (ii) any information provided by the petitioner or other interested parties.

(b) The Wildlife Board shall approve or deny the request for reclassification based on the issuance criteria provided in Section R657-53-11(1).

(6) A change in species classification shall be made in accordance with Title 63, Chapter 46a, Administrative Rulemaking Act.

(7) A request for species reclassification shall be considered a request for agency action as provided in Subsection 63-46b-3(3) and Rule R657-2.

R657-53-~~27~~-19. Request for Variance.

(1) A person may make a request for a variance to this rule for the collection, importation, propagation, or possession of an amphibian or reptile classified as prohibited under this rule by submitting a request for variance to the Certification Review Committee.

(2)(a) A request for variance shall include the following:

- (i) the name, address, and phone number of the person making the request;
- (ii) the species or subspecies of the amphibian or reptile and associated activities for which the request is made; and
- (iii) a statement of the facts and reasons forming the basis for the variance.

(b) In addition to the information required under Subsection (a), the person making the request must provide any information requested by the committee necessary to formulate a recommendation to the Wildlife Board.

(3) The committee shall, within a reasonable time, consider the request and shall submit its recommendation to the Wildlife Board.

(4) At the next available Wildlife Board meeting the Wildlife Board shall:

- (a) consider the committee recommendation; and
- (b) any information provided by the person making the request.

(5)(a) The Wildlife Board shall approve or deny the request based on the issuance criteria provided in Section R657-53-11.

(b) If the request applies to a broad class of persons and not to unique circumstances of the applicant, the Wildlife Board shall consider changing the species classification before issuing a variance to this rule.

(6)(a) If the request is approved, the Wildlife Board may impose any restrictions on the person making the request considered necessary for that person to maintain the standards upon which the variance is made.

(b) Any restrictions imposed on the person making the request shall be included in writing on the certificate of registration which shall be signed by the person making the request ~~before its issuance~~.

(7) A request for variance shall be considered a request for agency action as provided in Subsection 63-46b-3(3) and Rule R657-2.

R657-53-~~28~~-20. Appeal of Certificate of Registration Denial.

(1) A person may appeal the division's denial of a certificate of registration by submitting an appeal request to the Certification Review Committee.

(2) The request must be made within 30 days after the date of the denial.

(3) The request shall include:

- (a) the name, address, and phone number of the petitioner;
- (b) the date the request was mailed;
- (c) the species or subspecies of the amphibian or reptile and the activity for which the application was made; and

(d) supporting facts and other evidence applicable to resolving the issue.

(4) The committee shall review the request within a reasonable time after it is received.

(5) Upon reviewing the application and the reasons for its denial, the committee may:

(a) overturn the denial and approve the application; or

(b) uphold the denial.

(6) The committee may overturn a denial if the denial was:

(a) based on insufficient information;

(b) inconsistent with prior action of the division or the Wildlife Board;

(c) arbitrary or capricious; or

(d) contrary to law.

(7)(a) Within a reasonable time after making its decision, the committee shall mail a notice to the petitioner specifying the reasons for its decision.

(b) The notice shall include information that a person may seek Wildlife Board review of that decision.

(8)(a) If the committee upholds the denial, the petitioner may seek Wildlife Board review of the decision by submitting a request for Wildlife Board review within 30 days after its issuance.

(b) The request must include the information provided in Subsection (3).

(9)(a) Upon receiving a request for Wildlife Board review, the Wildlife Board shall, within a reasonable time, hold a hearing to consider the request.

(b) The Wildlife Board may:

(i) overturn the denial and approve the application; or

(ii) uphold the denial.

(c) The Wildlife Board shall provide the petitioner with a written decision within a reasonable time after making its decision.

(10) An appeal contesting initial division determination of eligibility for a certificate of registration shall be considered a request for agency action as provided in Subsection 63-46b-3(3) and Rule R657-2.

R657-53-21. Prohibited Collection Methods.

(1) Amphibians and reptiles may not be collected using any method prohibited in this rule and the proclamations of the Wildlife Board except as provided by a certificate of registration or the Wildlife Board.

(a) Lethal methods of collection are prohibited except as provided in Subsections R657-53-27(6) and (7) and R657-53-28(6), (8), and (9).

(b) The destruction of habitats such as breaking apart of rocks, logs or other shelters in or under which amphibians or reptiles may be found is prohibited.

(c) The use of winches, auto jacks, hydraulic jacks, crowbars and pry bars are prohibited.

(d) The use of gasoline or other potentially toxic substance is prohibited.

(e) The use of firearms, airguns or explosives is prohibited.

(f) The use of electrical or mechanical devices, or smokers is prohibited except as provided in Subsection (2)(b).

(g) The use of traps including pit fall traps, can traps, or funnel traps is prohibited.

(h) The use of fykes, seines, weirs, or nets of any description are prohibited except as provided in Subsection (2)(b).

(2)(a) Any logs, rocks, or other objects turned over or moved must be replaced in their original position.

(b) Dip nets less than 24 inches in diameter, snake sticks, and lizard nooses may be used.

R657-53-22. Personal Use: Collection and Possession or Importation and Possession of a Live or Dead Amphibian or Reptile.

(1) A person may collect and possess a live amphibian or reptile for personal use only as provided in Subsection (a), (b) or (c).

(a) Certificates of registration are not issued for the collection and possession of any live amphibian or reptile classified as prohibited for collection and possession, except as provided in R657-53-19.

(b) A certificate of registration is required for collection and possession of any live amphibian or reptile classified as controlled for collection and possession, except as otherwise provided by the Wildlife Board.

(c) A certificate of registration is not required for collection and possession of any live amphibian or reptile classified as noncontrolled for collection and possession, except as provided in Subsections R657-53-27(5) and (6) and R657-53-28(7) and (8).

(2) A person may collect and possess a dead amphibian or reptile or its parts for personal use only as provided in Subsections (a), (b) or (c).

(a) A person may collect and possess a dead amphibian or reptile or its parts classified as controlled for collection and possession without a certificate of registration as provided in Subsections (i) and (ii).

(i) The specimen must be frozen and submitted to the division by appointment within 30 days of collection; and

(ii) The specimen must be labeled with the species name, salvage date, salvage location, Universal Transverse Mercator (UTM) location coordinates and name of person collecting the dead amphibian or reptile.

(b) A certificate of registration is required for collection and possession of a dead amphibian or reptile or its parts classified as controlled for collection and possession where the dead amphibian or reptile or its parts remains in personal possession, except as otherwise provided by the Wildlife Board.

(i) A certificate of registration is not required for collection and possession of any dead amphibian or reptile classified as noncontrolled for collection and possession, except as provided in Subsections R657-53-27(5) and (6) and R657-53-28(7) and (8).

(ii) Collection and possession of any dead amphibian or reptile or its parts classified as noncontrolled for collection and possession, which remain in personal possession will count against collection and possession limits.

(c) A dead amphibian or reptile or its parts classified as prohibited for collection and possession may not be collected and possessed without a certificate of registration issued by the division for collection and possession of the specimen.

(3) A person may temporarily handle for personal use live amphibians or reptiles classified as noncontrolled and controlled for collection and possession without a certificate of registration only as provided in Subsections (a) through (d).

(a) An amphibian or reptile may be held for up to 15 minutes in a non-harmful way for the purpose of photography, noninvasive data collection and moving out of harm's way;

(i) For the purposes of this Subsection, noninvasive data collection means the collection of external measurements, specimen weights, external meristics, and sex determination which does not

involve the use of probes or other instruments which enter the body of the animal;

(b) The amphibian or reptile cannot be moved more than 60 feet from the location found;

(c) The amphibian or reptile can be placed in any container, bag or device which confines the animal so it may be transported; and

(d) The amphibian or reptile must be released immediately when directed to do so by a division employee.

(4) A certificate of registration is required for a person to handle live amphibians or reptiles classified as prohibited for collection and possession.

(5) A person may import and possess a live or dead amphibian or reptile or its parts for personal use only as provided in subsection (b), (c) and (d).

(a) Certificates of registration are not issued for the importation and possession of any live or dead amphibian or reptile or its parts classified as prohibited for importation and possession, except as provided in Subsection (d) and R657-53-19.

(b) A certificate of registration is required for importation and possession of any live or dead amphibian or reptile or its parts classified as controlled for importation and possession, except as otherwise provided by the Wildlife Board and subsection (i).

(i) Prior to importation, a certificate of registration shall be issued for the importation and the resulting possession of any live amphibian or reptile for personal use that is legally obtained from outside the state of Utah, is a species native to Utah, and is classified as controlled for importation and possession.

(ii) Legal documentation of the acquisition of the amphibian or reptile shall be maintained as determined in the certificate of registration.

(iii) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number to import any amphibian or reptile into Utah.

(iv) Imported native and naturalized species shall not count toward the possession limit.

(c) A certificate of registration is not required for importation and possession of any live or dead amphibian or reptile or its parts classified as noncontrolled for importation and possession.

(i) Legal documentation of the acquisition of the amphibian or reptile shall be maintained for the life of the animal or the time the animal is in possession.

(ii) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number to import any amphibian or reptile into Utah.

(iii) Imported native and naturalized species shall not count toward the possession limit.

(d) Notwithstanding subsection (5)(a) or (b), a person may import and possess any dead amphibian or reptile or its parts classified as prohibited or controlled, except as provided in Section R657-53-5, for personal use without obtaining a certificate of registration, provided the animal was legally taken, is held in legal possession, and a valid license, permit, tag, certificate of registration, bill of sale, or invoice is available for inspection upon request.

R657-53-23. Scientific, or Educational Use: Collection and Possession or Importation and Possession of a Live or Dead Amphibian or Reptile.

(1) A person may collect and possess or import and possess a live or dead amphibian or reptile or its parts for scientific or

educational use only as provided in Subsections (a), (b) and (c) and R657-53-19.

(a) The division may issue a certificate of registration to a university, college, governmental agency, bona fide nonprofit educational or scientific institution, or a person involved in wildlife research through an eligible institution to collect and possess or import and possess a live or dead amphibian or reptile classified as prohibited for collection and possession or importation and possession if, in the opinion of the division, the scientific or educational use is beneficial to wildlife and significantly benefits the general public without material detriment to wildlife.

(b) A certificate of registration is required for the collection and possession or importation and possession of any live or dead amphibian or reptile or its parts classified as controlled for collection and possession or importation and possession for scientific or educational use, except as otherwise provided by the Wildlife Board.

(i) Prior to importation, a certificate of registration shall be issued for the importation and resulting possession of any live amphibian or reptile for scientific or educational use that is legally obtained from outside the state of Utah, is a species native to Utah, and is classified as controlled for importation and possession.

(ii) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number to import any amphibian or reptile into Utah.

(iii) Imported native and naturalized species shall not count toward the possession limit.

(c)(i) A certificate of registration is not required for the collection and possession or importation and possession of any live or dead amphibian or reptile or its parts classified as noncontrolled for collection and possession or importation and possession for scientific or educational use, except as provided in Subsections R657-53-27(5) and (6) and R657-53-28(7) and (8).

(ii) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number to import any amphibian or reptile into Utah.

(iii) Imported native and naturalized species shall not count toward the possession limit.

R657-53-24. Commercial Use: Collection and Possession or Importation and Possession of a Live or Dead Amphibian or Reptile.

(1) Pursuant to Sections 23-13-13 and 23-20-3, a person may not collect and possess a live amphibian or reptile for a commercial use or commercial venture for pecuniary gain, unless otherwise provided in this rule or a certificate of registration.

(2) A person may collect and possess or import and possess a live or dead amphibian or reptile or its parts for commercial use only as provided in Subsections (a), (b) and (c) and R657-53-19.

(a)(i) A person may import and possess a live amphibian or reptile classified as non-controlled for importation and possession for a commercial use or a commercial venture, except as provided in subsection (ii).

(ii) A native or naturalized species or subspecies of amphibian or reptile may not be sold or traded unless it originated from a captive-bred population.

(iii) Complete and accurate records for native or naturalized species must be maintained and available for inspection for five years from the date of the transaction, documenting the date, name, address, and telephone number of the person from whom the amphibian or reptile has been obtained.

(iv) Complete and accurate records must be maintained and available for inspection for five years from the date of the transfer, documenting the date, name, address and certificate of registration number if applicable of the person receiving the amphibian or reptile.

(b)(i) A person may not import and possess a live amphibian or reptile classified as controlled for importation and possession for a commercial use or commercial venture without first obtaining a certificate of registration.

(ii) A certificate of registration will not be issued to sell or trade a native or naturalized species of amphibian or reptile unless it originates from a captive-bred population.

(iii) It is unlawful to transfer a live amphibian or reptile classified as controlled for collection and possession or importation and possession to a person who does not have a certificate of registration to possess the amphibian or reptile, except as follows:

(A) the amphibian or reptile is captive-bred;

(B) the transferee is not domiciled in Utah;

(C) the transferee is exporting the amphibian or reptile out of Utah; and

(D) the transferee follows the transport provisions in Section R657-53-25.

(iv) Complete and accurate records must be maintained by the buyer and the seller for five years from the date of the transaction or transfer, documenting the date, and the name, address, and telephone number of the person from whom the amphibian or reptile has been obtained and the person receiving the amphibian or reptile.

(v) The records indicated in Subsection (iv) must be made available for inspection upon request of the division.

(c)(i) A certificate of registration will not be issued for importation and possession of a live amphibian or reptile, classified as prohibited for importation and possession for a commercial use or commercial venture, except as provided in Subsection (ii) or R657-53-19.

(ii) The division may issue a certificate of registration to a zoo, circus, amusement park, aviary, or film company to import and possess a live amphibian or reptile classified as prohibited for importation and possession if, in the opinion of the division, the importation and possession for a commercial use is beneficial to wildlife or significantly benefits the general public without material detriment to wildlife.

(iii) The division's authority to issue a certificate of registration to a zoo, circus, amusement park, or aviary under this Subsection is restricted to those facilities that keep the prohibited amphibian or reptile in a park, building, cage, enclosure or other structure for the primary purpose of public exhibition or viewing.

(3) It is unlawful to sell or trade any turtle, including tortoises, less than 4" in carapace length (Referenced Federal Register 21 CFR 1240.62).

(4)(a) Pursuant to Sections 23-13-13 and 23-20-3, a person may not collect and possess or import and possess any dead amphibian or reptile or its parts for a commercial use or commercial venture for pecuniary gain, unless otherwise provided in the rules and proclamations of the Wildlife Board, or a memorandum of understanding with the division.

(b) The restrictions in Subsection (a) do not apply to importation and possession of a dead amphibian or reptile sold or traded for educational use.

R657-53-25. Transporting a Live Amphibian or Reptile Through Utah.

A certificate of veterinary inspection is required from the state of origin as provided in Utah Department of Agriculture Rule R58-1 and proof of legal possession must accompany the zoological animal

(1) Any controlled or prohibited amphibian or reptile may be transported through Utah without a certificate of registration if:

(a) the amphibian or reptile remains in Utah no more than 72 hours; and

(b) the amphibian or reptile is not sold, transferred, exhibited, displayed, or used for a commercial venture while in Utah.

(2) Proof of legal possession must accompany the amphibian or reptile.

(3) If delays in transportation arise, an extension of the 72 hours may be requested by contacting the Wildlife Registration Office in Salt Lake City.

R657-53-26. Propagation of Amphibians or Reptiles.

(1) A person may propagate native amphibians or reptiles that are legally collected in Utah and possessed only as provided in Subsection (a) through (c).

(a) Certificates of registration are not issued for the propagation of any native amphibian or reptile collected in Utah and classified as prohibited for propagation except as provided in R657-53-19.

(b) A certificate of registration is required for propagating any native amphibian or reptile collected in Utah and classified as controlled for propagation, except as otherwise provided by the Wildlife Board.

(i) All progeny shall be marked as determined in the certificate of registration;

(ii) A report shall be submitted yearly as specified in the certificate of registration;

(iii) Records of the progeny as determined in the certificate of registration shall be kept for the life of the animal or time in possession; and

(iv) Progeny shall not count toward possession limits.

(c) A certificate of registration is required for propagating native amphibians or reptiles collected in Utah and classified as noncontrolled for propagation.

(i) A report shall be submitted yearly as specified in the certificate of registration;

(ii) Records of the progeny as determined in the certificate of registration shall be kept for the life of the animal or time in possession; and

(iii) Progeny shall not count toward possession limits.

(2) A person may propagate naturalized amphibians or reptiles that are legally collected in Utah and possessed only as provided in Subsection (a) through (c).

(a) Certificates of registration are not issued for the propagation of any naturalized amphibian or reptile collected in Utah and classified as prohibited for propagation except as provided in R657-53-19.

(b) A certificate of registration is not required for propagating any naturalized amphibian or reptile collected in Utah and classified as controlled for possession but classified as noncontrolled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession; and

(ii) Progeny shall not count toward possession limits.

(c) A certificate of registration is not required for propagating naturalized amphibians or reptiles collected in Utah and classified as noncontrolled for propagation.

(i) Progeny shall not count toward possession limits.

(3) A person may propagate native amphibians or reptiles that are legally imported into Utah and possessed only as provided in Subsection (a) through (c).

(a) Certificates of registration are not issued for the propagation of any native amphibian or reptile imported into Utah and classified as prohibited for propagation except as provided in R657-53-19.

(b) A certificate of registration is not required for propagating any native amphibian or reptile imported into Utah and classified as controlled for possession but classified as noncontrolled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession; and

(ii) Progeny shall not count toward possession limits.

(c) A certificate of registration is not required for propagating native amphibians or reptiles imported into Utah and classified as noncontrolled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession; and

(ii) Progeny shall not count toward possession limits.

(4) A person may propagate nonnative or naturalized amphibians or reptiles that are legally imported into Utah and possessed only as provided in Subsection (a) through (c).

(a) Certificates of registration are not issued for the propagation of any nonnative or naturalized amphibian or reptile imported into Utah and classified as prohibited for propagation except as provided in R657-53-19.

(b) A certificate of registration is not required for propagating any nonnative or naturalized amphibian or reptile imported into Utah and classified as controlled for possession but classified as noncontrolled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession; and

(ii) Progeny shall not count toward possession limits.

(c) A certificate of registration is not required for propagating nonnative or naturalized amphibians or reptiles imported into Utah and classified as noncontrolled for propagation.

(i) Progeny shall not count toward possession limits.

(5) Certificates of registration may be denied to an applicant who:

(a) is a non-resident of Utah;

(b) fails to provide and maintain suitable, disease-free facilities and to humanely hold and maintain amphibians or reptiles in good condition;

(c) has been judicially or administratively found guilty of violating the provisions of this rule;

(d) has been convicted of, pleaded no contest to, or entered into a plea in abeyance to any criminal offense that bears a reasonable relationship to the applicant's ability to safely and responsibly collect, import, transport or possess amphibians or reptiles; or

(e) fails to maintain the propagation records and file the annual reports required in this section.

(6) Legally-obtained amphibians or reptiles and their progeny and descendants born in captivity, which are held in possession under the authority of a certificate of registration, remain property of the holder, but are subject to regulation by the division in accordance with the needs for public health, welfare, and safety, and impacts on wildlife.

R657-53-27. Classification and Specific Rules for Amphibians.

(1) Common and scientific nomenclature recognized and adopted by the Society for the Study of Amphibians and Reptiles (2003) will be utilized in Subsection (2).

(2) Amphibians are classified as follows:

(a) Frogs are classified as follows:

(i) American bullfrog, Ranidae Family (Rana catesbeiana) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (7);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Canyon treefrog, Hylidae Family (Hyla arenicolor) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Clawed frog, Pipidae Family (Xenopus) (All species) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) Columbia spotted frog, Ranidae Family (Rana luteiventris) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(v) Green frog, Ranidae Family (Rana clamitans) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (7);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(vi) Lowland leopard frog, Ranidae Family (Rana yavapaiensis) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(vii) Northern leopard frog, Ranidae Family (Rana pipiens) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(viii) Pacific treefrog, Hylidae Family (Pseudacris regilla) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ix) Relict leopard frog, Ranidae Family (Rana onca) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(x) Western chorus frog, Hylidae Family (Pseudacris triseriata) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(b) Spadefoots are classified as follows:

(i) Great basin spadefoot, Pelobatidae Family (Spea intermontana) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Mexican spadefoot, Pelobatidae Family (Spea multiplicata) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Plains spadefoot, Pelobatidae Family (Spea bombifrons) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(c) Salamanders are classified as follows:

(i) Tiger salamander, Ambystomatidae Family (Ambystoma tigrinum) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah, except as provided in Subsection (6);

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(d) Toads are classified as follows:

(i) Arizona toad, Bufonidae Family (Bufo microscaphus) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Cane (marine) toad, Bufonidae Family (Bufo marinus) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Great plains toad, Bufonidae Family (Bufo cognatus) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) Red-spotted toad, Bufonidae Family (Bufo punctatus) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(v) Western toad, Bufonidae Family (Bufo boreas) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(t) Woodhouse's toad, Bufonidae Family (Bufo woodhousii) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah.

(3)(a) Amphibians classified at the genus or family taxonomic level include all species and subspecies.

(b) Amphibians classified at the species taxonomic level include all subspecies.

(c) Amphibians classified at the subspecies taxonomic level do not include any other related subspecies.

(4) All species or subspecies of amphibians not listed in Subsection (2) are classified as noncontrolled for collection, importation, possession and propagation.

(5)(a) A person must obtain a certificate of registration to collect and possess more than three amphibians of each species or subspecies classified as noncontrolled for collection and possession within a calendar year, except as provided in Subsection (6).

(b) A person must obtain a certificate of registration to possess more than nine amphibians in aggregate classified as noncontrolled for collection and possession and collected within Utah, except as provided in Subsection (6).

(6) A person may collect and possess for personal use up to 50 Tiger salamanders (Ambystoma tigrinum) without a certificate of registration.

(7) A person may collect and possess any number of American bullfrogs (Rana catesbeiana) or Green frogs (Rana clamitans) without a certificate of registration provided they are either killed or released immediately. A person may not transport a live bullfrog or green frog from the point of capture without first obtaining a certificate of registration.

R657-53-28. Classification and Specific Rules for Reptiles.

(1)(i) Common and scientific nomenclature recognized and adopted by the Society for the Study of Amphibians and Reptiles (2003) shall be utilized in Subsection (2) for North American species found north of Mexico.

(ii) Common and scientific nomenclature recognized and adopted by C. Mattison in The Encyclopedia of Snakes (1999) shall be utilized for all other snakes found in Subsection (2).

(iii) Common and scientific nomenclature recognized and adopted by O'Shea and Halliday in Smithsonian Handbooks: Reptiles and Amphibians (2002) shall be utilized for the Gharial found in subsection (2).

(2) Reptiles are classified as follows:

(a) Crocodiles are classified as follows:

(i) Alligators and caimans, Alligatoridae Family (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Crocodiles, Crocodylidae Family (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah; and

(iii) Gharial, Gavialidae Family (Gavialis gangeticus) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah.

(b) Lizards are classified as follows:

(i) Beaded lizard, Helodermatidae Family, (Heloderma horridum) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Chuckwalla, Iguanidae Family (Sauromalus) (All species) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation and possession and prohibited for propagation of individuals legally obtained outside of Utah;

(iii) Common lesser earless lizard, Phrynosomatidae Family (Holbrookia maculata) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) Common side-blotched lizard, Phrynosomatidae Family (Uta stansburiana) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (8);

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(v) Desert horned lizard, Phrynosomatidae Family (Phrynosoma platyrhinos) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(vi) Desert iguana, Iguanidae Family (Dipsosaurus dorsalis) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation and possession, and prohibited for propagation of individuals legally obtained outside of Utah;

(vii) Desert spiny lizard, Phrynosomatidae Family (Sceloporus magister) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(viii) Eastern collared lizard, Crotophytidae Family (Crotophytus collaris) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ix) Gila monster, Helodermatidae Family (Heloderma suspectum) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(x) Great Basin collared lizard, Crotophytidae Family (Crotophytus bicinctores) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xi) Great Basin fence lizard, Phrynosomatidae Family (Sceloporus occidentalis longipes) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xii) Great Basin skink, Scincidae Family (Eumeces skiltonianus utahensis) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xiii) Great Basin Whiptail, Teiidae Family (Aspidoscelis tigris) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xiv) Greater short-horned lizard, Phrynosomatidae Family (Phrynosoma hernandesi) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xv) Long-nosed leopard lizard, Crotophytidae Family (Gambelia wislizenii) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xvi) Northern plateau lizard, Phrynosomatidae Family (Sceloporus undulatus elongatus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xvii) Northern sagebrush lizard, Phrynosomatidae Family (Sceloporus graciosus graciosus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (5);

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xviii) Ornate tree lizard, Phrynosomatidae Family (Urosaurus ornatus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xix) Plateau striped whiptail, Teiidae Family (Aspidoscelis velox) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xx) Plateau tiger whiptail, Teiidae Family (Aspidoscelis septentrionalis) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxi) Southern plateau lizard, Phrynosomatidae Family (Sceloporus undulatus tristichus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxii) Utah banded gecko, Gekkonidae Family (Coleonyx variegatus utahensis) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxiii) Utah night lizard, Xantusiidae Family (Xantusia vigilis utahensis) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxiv) Variable (many-lined) skink, Scincidae Family (Eumeces multivirgatus epipleurotus)

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxv) Western zebra-tailed lizard, Phrynosomatidae Family (Callisaurus draconoides rhodostictus) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah; and

(xxvi) Yucca night lizard, Xantusiidae Family (Xantusia vigilis vigilis) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(c) Snakes are classified as follows:
(i) Bird Snake, Colubridae Family (Thelotornis) (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Boomslang, Colubridae Family (Dispholidus typus) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Burrowing asps, Atractaspidae Family (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) California kingsnake, Colubridae Family (Lampropeltis getula californiae) is

(A) controlled for collection, possession and noncontrolled for propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(v) Desert glossy snake, Colubridae Family (Arizona elegans eburnata) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(vi) Desert nightsnake, Colubridae Family (Hypsiglena torquata deserticola) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(vii) Desert striped whipsnake, Colubridae Family (Masticophis taeniatus taeniatus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(viii) Desert gophersnake, Colubridae Family (Pituophis catenifer deserticola) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ix) Great Basin rattlesnake, Viperidae Family (Crotalus oreganus lutosus) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (6);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(x) Great Plains ratsnake, Colubridae Family (Elaphe emoryi) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xi) Groundsnake, Colubridae Family (Sonora semiannulata) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xii) Keelback, Colubridae Family (Rhabdophis) (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xiii) Midget faded rattlesnake, Viperidae Family (Crotalus oreganus concolor) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xiv) Mojave rattlesnake, Viperidae Family (Crotalus scutulatus) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xv) Mojave patch-nosed snake, Colubridae Family (Salvadora hexalepis mojavensis) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xvi) Painted desert glossy snake, Colubridae Family (Arizona elegans philipi) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xvii) Pit vipers, Viperidae Family (All species) are

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xviii) Prairie rattlesnake, Viperidae Family (Crotalus viridis) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xix) Proteroglyphous snakes, Australian spp., cobras, coral snakes, kraits, and their allies, Elapidae Family (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xx) Red racer (Coachwhip), Colubridae Family (Masticophis flagellum piceus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxi) Regal ring-necked snake, Colubridae Family (Diadophis punctatus regalis) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxii) Rubber boa, Boidae Family (Charina bottae) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxiii) Sidewinder, Viperidae Family (Crotalus cerastes) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxiv) Smith's black-headed snake, Colubridae Family (Tantilla hobartsmithi) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxv) Smooth greensnake, Colubridae Family (Opheodrys vernalis) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxvi) Sonoran lyresnake, Colubridae Family (Trimorphodon biscutatus lambda) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxvii) Speckled rattlesnake, Viperidae Family (Crotalus mitchellii) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxviii) Spotted leaf-nosed snake, Colubridae Family (Phyllorhynchus decurtatus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxix) Utah milksnake, Colubridae Family (Lampropeltis triangulum taylori) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxx) Utah mountain kingsnake, Colubridae Family (Lampropeltis pyromelana infralabialis) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxi) Utah threadsnake, Leptotyphlopidae Family (Leptotyphlops humilis utahensis) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxii) Valley gartersnake, Colubridae Family (Thamnophis sirtalis fitchi) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxiii) Wandering gartersnake, Colubridae Family (Thamnophis elegans vagrans) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (8);

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxiv) Western black-necked gartersnake, Colubridae Family (Thamnophis cyrtopsis cyrtopsis) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxv) Western long-nosed snake, Colubridae Family (Rhinocheilus lecontei lecontei) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah; and

(xxxvi) Western yellow-bellied racer, Colubridae Family (Coluber constrictor mormon) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(d) Turtles are classified as follows:

(i) Alligator snapping turtle, Chelydridae Family (Macrochelys temminckii) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (9);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Common snapping turtle, Chelydridae Family (Chelydra serpentina) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (9);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Desert tortoise, Testudinidae Family (Gopherus agassizii) is

(A) prohibited for collection, and propagation and controlled for possession of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) Painted turtle, Emydidae Family (Chrysemys picta) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah.

(v) Red-eared slider, Emydidae Family (Trachemys scripta elegans) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah.

(vi) Spiny softshell, Trionychidae Family (Apalone spinifera) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (9);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(3)(a) Reptiles classified at the genus or family taxonomic level include all species and subspecies.

(b) Reptiles classified at the species taxonomic level include all subspecies.

(c) Reptiles classified at the subspecies taxonomic level do not include any other related subspecies.

(4) All species or subspecies of reptiles not listed in Subsection (2) are classified as noncontrolled for collection, importation, possession and propagation.

(5) A person may not:

(a) knowingly disturb the den of any reptile or kill, capture, or harass any reptile within 100 yards of a reptile den without first obtaining a certificate of registration from the division; or

(b) indiscriminately kill any reptile.

(6)(a) Great Basin rattlesnakes, Crotalus oreganus lutosus, may be killed without a certificate of registration only for reasons of human safety.

(b) The carcass or its parts of a Great Basin rattlesnake killed pursuant to Subsection (a) may be retained for personal use or possessed.

(7)(a) A person must obtain a certificate of registration to collect more than three reptiles of each species or subspecies classified as noncontrolled for collection and possession within a calendar year, except as provided in Subsection (8).

(b) A person must obtain a certificate of registration to possess more than nine reptiles of each species or more than 56 in aggregate which are classified as noncontrolled for collection and possession and collected within Utah, except as provided in Subsection (8).

(8) In a calendar year, a person may collect and possess for personal use 25 common side-blotched lizards (Uta stansburiana), 25

northern sagebrush lizards (Sceloporus graciosus graciosus), and 25 wandering gartersnakes (Thamnophis elegans vagrans), without obtaining a certificate of registration or counting against the aggregate possession limit.

(9)(a) A person may collect and possess any number of common snapping turtles (Chelydra serpentina), alligator turtles (Macrochelys temminckii) or spiny softshell (Apalone spinifera) turtles without a certificate of registration provided they are either killed or released immediately upon removing them from the point of capture.

(b) A person may not transport a live common snapping turtle, alligator turtle or spiny softshell turtle from the point of capture from which it was collected without first obtaining a certificate of registration.

KEY: wildlife, import restrictions, amphibian, reptile

Date of Enactment or Last Substantive Amendment: ~~June 3, 2003~~2007

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-20-3; 23-13-14



Public Safety, Administration R698-100

Possession of Firearms, Ammunition, Dangerous Weapons, Explosives, Chemical and Incendiary Devices in Olympic venue Secure Areas

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 29728

FILED: 03/23/2007, 12:04

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule was enacted for use during the Olympic Winter Games and is no longer needed due to completion of the Olympics.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53-1-108(1)(c)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: Since Olympic venue areas are no longer in existence, this rule is not being enforced and repeal will have no fiscal impact.
- ❖ LOCAL GOVERNMENTS: Since Olympic venue areas are no longer in existence, this rule is not being enforced and repeal will have no fiscal impact.
- ❖ OTHER PERSONS: Since Olympic venue areas are no longer in existence, this rule is not being enforced and repeal will have no fiscal impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Since Olympic venue areas are no longer in existence, this rule is not being enforced and repeal will have no fiscal impact.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Since Olympic venue areas are no longer in existence, this rule is not being enforced and repeal will have no fiscal impact. Scott Duncan, Commissioner

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

PUBLIC SAFETY
ADMINISTRATION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 1ST FLR
SALT LAKE CITY UT 84119-5994, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Richard D. Wyss at the above address, by phone at 801-965-4794, by FAX at 801-366-0221, or by Internet E-mail at rwyss@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2007

AUTHORIZED BY: Scott T Duncan, Commissioner

R698. Public Safety, Administration.

~~**R698-100. Possession of Firearms, Ammunition, Dangerous Weapons, Explosives, Chemical and Incendiary Devices in Olympic Venue Secure Areas.**~~

~~**R698-100-1. Purpose.**~~

~~— A. The purpose of this rule is to:~~

~~— (1) Designate the locations of secure areas within Olympic venues where possession of a firearm, ammunition, dangerous weapon, or explosive, chemical, or incendiary device is prohibited between January 25, 2002 and April 1, 2002.~~

~~— (2) Provide notice that a reasonable person would understand regarding:~~

~~— (a) the location of the Olympic venue secure areas where possession of the items listed in Subsection R698-100-1.A.(1) is prohibited;~~

~~— (b) the location of public access entrances and exits to the Olympic venue secure areas; and~~

~~— (c) the penalties for violating Section 76-10-531, restriction of dangerous weapons in Olympic venue secure areas.~~

~~— (3) Designate persons authorized to possess the items listed in Subsection R698-100-1.A.(1) in Olympic venue secure areas, including those persons exempted by Subsection 76-10-523(1).~~

~~**R698-100-2. Authority.**~~

~~— This rule is authorized by Section 53-12-301.1, which requires the Olympic law enforcement commander to make rules designating Olympic venue secure areas, providing notice regarding their location,~~

~~the location of public access entrances and exits at Olympic venue secure areas, and the penalties associated with violating Subsection 76-10-523(1), dealing with the restriction of dangerous weapons in Olympic venue secure areas.~~

~~**R698-100-3. Definitions.**~~

~~— A. "Olympic Games" means the XIXth Olympic Winter Games and the VIIIth Paralympic Winter Games. Reference to "Olympic" or "Olympics" is intended to include the XIXth Olympic Winter Games and the VIIIth Paralympic Winter Games.~~

~~— B. "Olympic venue" means:~~

~~— (1) A specific location that is:~~

~~— (a) secured by a perimeter and public access is controlled; and~~

~~— (b) where spectators view Olympic events.~~

~~— (2) A specific location designated for media.~~

~~— (3) A specific location designated as official athlete housing not open to the general public.~~

~~— C. "Olympic events" means competitions, practice sessions, performances, celebrations and other events which for public safety or law enforcement purposes are designated by the commander as connected with the Olympics or Olympic related whether recognized by the organizer as Olympic events or not.~~

~~— D. "Olympic venue secure area" means:~~

~~— (1) A specific location secured by a perimeter, where public access is controlled and where spectators view Olympic events where the possession of a firearm, ammunition, dangerous weapon, or explosive, chemical, or incendiary device is prohibited between January 25, 2002 and April 1, 2002. This includes areas designated as practice venues, performance or celebrations sites in connection with the Olympic Games, which are secured by a perimeter, where public access is controlled and where spectators are allowed to view practices, or performances, or celebrations or other Olympic related events.~~

~~— (2) A specific location designated for media where the possession of a firearm, ammunition, dangerous weapon, or explosive, chemical or incendiary device is prohibited between January 25, 2002 and April 1, 2002.~~

~~— (3) A specific location designated as official athlete housing not open to the general public where the possession of a firearm, ammunition, dangerous weapon, or explosive, chemical, or incendiary device is prohibited between January 25, 2002 and April 1, 2002.~~

~~— (4) An area outside the secure perimeter extending for a reasonable distance necessary to ensure the security and safety of the venue, its access points and access control equipment and personnel, and participants, spectators, officials and others with authorized access to the venue.~~

~~— E. "Explosive, chemical or incendiary device" is defined in Section 76-10-306(1)(a).~~

~~— F. "Firearm" is defined in Section 76-10-501(9)(a).~~

~~— G. "Dangerous weapon" is defined in Section 76-10-501(5)(a).~~

~~**R698-100-4. Location of Olympic Venue Secure Areas: Designation.**~~

~~— A. The commander designates the following categories of venues, sites and locations as places within which Olympic venue secure areas, as that term is defined in Subsection R698-100-3.D., are located:~~

~~— 1. All of the competition venues;~~

~~— 2. All of the practice venues and locations;~~

~~— 3. All of the Olympic cultural event venues and locations;~~

~~— 4. Rice Eccles/Olympic stadium;~~

~~— 5. Olympic celebration and performance sites, including, but not limited to, the Salt Lake Olympic Square;~~

- 6. International Broadcast Center/Main Media Center;
- 7. Athlete Village;
- 8. Any area officially designated by the commander for media or official athlete housing not open to the general public;
- 9. Any vehicle provided by the Salt Lake Organizing Committee for transportation to or from Olympic venue secure areas;
- 10. Any other Olympic venue secure area that meets the statutory requirements for such area and is designated by the commander in writing.

R698-100-5. Location of Olympic Venue Secure Areas: Notice.

— A. The boundaries of the Olympic venue secure areas will be marked by signs posted at appropriate intervals on the perimeter of each venue secure area or by markings or other means, including, but not limited to fences or other barriers, placed to delineate the secure perimeter of the venue. The secure perimeter of the venue shall be identified in a manner providing notice reasonably likely to come to the attention of an intruder in language and in a form that a reasonable person would understand. Personal communication by a law enforcement officer or other person officially posted to monitor the perimeter will be sufficient for advising a person of the existence and location of the secure perimeter.

— B. The signs, markings or other means, including personal communication, used to delineate the secure perimeter of a venue, in addition to giving reasonable notice regarding the location of the secure perimeter of the venue, will also give notice that a reasonable person would understand regarding the prohibition against entry into the venue secure area in possession of a firearm, ammunition, dangerous weapon, or explosive, chemical or incendiary device and the penalties associated with such unlawful entry.

— C. Form of the notice is given in the following table:

TABLE

NOTICE
OLYMPIC VENUE SECURE AREA

~~ENTRY INTO THIS AREA IS PROHIBITED UNLESS AUTHORIZED. ALL ENTRY MUST BE THROUGH OFFICIAL VENUE ACCESS POINTS. UNAUTHORIZED ENTRY IS PUNISHABLE AS A TRESPASS. UCA 76-6-206. ENTRY INTO THIS AREA IN POSSESSION OF ANY FIREARM, AMMUNITION, DANGEROUS WEAPON, EXPLOSIVE, CHEMICAL OR INCENDIARY DEVICE WITHOUT AUTHORIZATION IS ALSO PROHIBITED. VIOLATION OF THIS PROHIBITION IS PUNISHABLE BY FINE AND IMPRISONMENT AS PROVIDED IN UCA 76-10-531.~~

R698-100-6. Public Access Entrance and Exits: Notice.

— A. Public access entrances and exits for each Olympic venue secure area will be clearly marked by signs or other means in language and by means that a reasonable person would understand.

— B. Each public access entrance and exit for each Olympic venue secure area will have a sign posted giving notice in language that a reasonable person would understand regarding the prohibition against entry into the venue secure area in possession of a firearm, ammunition, dangerous weapon, or explosive, chemical or incendiary device and the penalties associated with such unlawful entry.

— C. Form of the notice is given in the following table:

TABLE

NOTICE
OLYMPIC VENUE SECURE AREA

~~THIS IS AN OLYMPIC VENUE SECURE AREA. ENTRY IS RESTRICTED TO THOSE WHO ARE AUTHORIZED OR PERMITTED TO BE WITHIN THE AREA. UNAUTHORIZED ENTRY IS PUNISHABLE AS A TRESPASS. UCA 76-6-206. ENTRY INTO THIS AREA IN POSSESSION OF A FIREARM, AMMUNITION,~~

~~DANGEROUS WEAPON, EXPLOSIVE, CHEMICAL OR INCENDIARY DEVICE WITHOUT AUTHORIZATION IS PROHIBITED. UNAUTHORIZED POSSESSION OF SUCH ITEMS WILL RESULT IN YOUR BEING DENIED ENTRY. VIOLATION OF THIS PROHIBITION IS PUNISHABLE BY FINE AND IMPRISONMENT AS PROVIDED IN UCA 76-10-531.~~

R698-100-7. Location of Secure Weapons Storage Areas: Notice.

— The Olympic law enforcement commander elects not to provide secure weapons storage areas.

R698-100-8. Penalties for Violating Section 76-10-531: Notice.

— A. Entry into an Olympic venue secure area in unauthorized possession of a firearm, ammunition or dangerous weapon is punishable as a Class B misdemeanor (a term of imprisonment not exceeding six (6) months; a fine not exceeding \$1,000, or both). In addition, Utah law requires a surcharge of 85% of the fine to be added to any fine.

— B. Entry into an Olympic venue secure area in unauthorized possession of an explosive, chemical or incendiary device is punishable as a felony of the first degree (a term of imprisonment not less than five years and which may be for life; a fine not exceeding \$10,000 or both). In addition, Utah law requires a surcharge of 85% of the fine to be added to any fine.

R698-100-9. Exempted Person: Designation.

— A. The following categories of individuals are exempt from the coverage of this rule:

— 1. Those individuals listed as exempt from weapons laws pursuant to Section 76-10-523(1)(a) through (g);

— 2. Members of the United States Armed Forces or members of a National Guard while properly engaged in duties related to the Olympic Games;

— 3. Members of the National Ski Patrol and employees of the Forest Service or private employees of the organizer or a venue while engaged in avalanche control or other safety related duties in connection with the Olympic Games so long as they are accompanied while in an Olympic venue secure area by a person exempt under Subsections 76-10-523(1)(a), (b) or (c);

— 4. Explosive ordnance disposal personnel while carrying out responsibilities related to the Olympic Games;

— 5. Fireworks handlers and support personnel accredited to an Olympic venue by the organizer who are authorized by law to possess and use fireworks, explosive devices and related materials during and in connection with an Olympic event as that term is defined by this rule, whose identity and credentials are made known to the Public Safety venue commander with responsibility for the venue or, if there is no venue commander, to the Olympic law enforcement commander or his designee prior to entry into any Olympic venue secure area, subject to the approval of the Public Safety venue commander or the Olympic law enforcement commander or his designee;

— 6. Performers and others accredited to an Olympic venue by the organizer who are authorized by law to possess and use firearms and ammunition during and in connection with an Olympic event as that term is defined by this rule, whose identity and credentials are made known to the Public Safety venue commander with responsibility for the venue or, if there is no venue commander, to the Olympic law enforcement commander or his designee prior to entry into any Olympic venue secure area, subject to the approval of the Public Safety venue commander or the Olympic law enforcement commander or his designee.

~~— B. The commander may designate additional exemptions from the coverage of this rule as required during and in connection with the Olympic Games.~~

~~R698-100-10. Biathlon:~~

~~— Athletes, coaches, trainers, equipment managers, armorers, and others who are accredited by the organizer, the International Olympic Committee, a National Olympic Committee, or the International Biathlon Union, as official participants or support personnel for the biathlon competitions held in connection with the Olympic Games, and who have accredited access to the biathlon competition venue for~~

~~competition and training, are exempt from the requirements of this rule as they apply to any Olympic venue secure area associated with the biathlon competition for the period of the Olympic Games.~~

~~KEY: Olympics, security, firearm~~

~~Date of Enactment or Last Substantive Amendment: December 19, 2001~~

~~Authorizing, and Implemented or Interpreted Law: 53-12-301.1]~~

◆ ————— ◆

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

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

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

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

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends May 15, 2007. At its option, the agency may hold public hearings.

From the end of the waiting period through August 13, 2007, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

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

The Changes in Proposed Rules Begin on the Following Page.

Commerce, Consumer Protection
R152-42
 Uniform Debt-Management Services
 Act Rules

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 29413
 Filed: 03/20/2007, 09:01

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In response to the public comments received in relation to the proposed new rule relating to the Uniform Debt-Management Services Act, the Division has determined that it is necessary to make further changes to the proposed rule. The changes to the proposed rule state that a list of approved accrediting organizations will be placed on the Division's website or can be obtained by contacting the Division, as opposed to having those organizations listed in the rule. The change also states that those organizations or programs that have been approved by the Division to meet the requirement of Subsection 13-42-106(9) will be placed on the Division's website or can be obtained by contacting the Division, rather than having those organizations or programs set out in the rule.

SUMMARY OF THE RULE OR CHANGE: The changes to the proposed rule state that a list of approved accrediting organizations will be placed on the Division's website or can be obtained by contacting the Division, as opposed to having those organizations listed in the rule. The change also states that those organizations or programs that have been approved by the Division to meet the requirement of Subsection 13-42-106(9) will be placed on the Division's website or can be obtained by contacting the Division, rather than having those organizations or programs set out in the rule. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the February 1, 2007, issue of the Utah State Bulletin, on page 5. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 13-42-102(9)(c), 13-42-112(2), 13-42-132(3), and 13-42-132(6)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** This change in proposed rule presents no additional anticipated costs or savings to the state budget other than those set forth in the original proposed new rule filing.
- ❖ **LOCAL GOVERNMENTS:** This change in proposed rule presents no additional anticipated costs or savings to local government other than those set forth in the original proposed new rule filing.

❖ **OTHER PERSONS:** This change in proposed rule presents no additional anticipated costs or savings to other persons other than those set forth in the original proposed new rule filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This change in proposed rule presents no additional compliance costs for affected persons other than those set forth in the original proposed new rule filing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated as a result of this change in proposed rules. Francine Giani, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Thomas Copeland at the above address, by phone at 801-530-6601, by FAX at 801-530-6001, or by Internet E-mail at tcopeland@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 5/04/2007 at 9:00 AM, Heber M Wells Bldg, 160 E 300 S, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2007

AUTHORIZED BY: Kevin V Olsen, Director

R152. Commerce, Consumer Protection.
R152-42. Uniform Debt-Management Services Act Rules.

.....

R152-42-4. Independent Accrediting Organizations.

In order to comply with requirements of Utah Code Section 13-42-106(8) a provider must[-

- ~~— (1) be a member of the National Foundation for Credit Counseling;~~
- ~~— (2) be a member of the Association of Independent Consumer Credit Counseling Agencies;~~
- ~~— (3) be accredited by the Council on Accreditation;~~
- ~~— (4) be certified meeting the International Organization for Standardization 9001:2000 standards; or~~
- ~~— (5) be accredited by an accrediting body approved by the Division by rule.] provide evidence of accreditation by an independent accrediting organization approved by the Director of~~

the Division that assures compliance with industry standards. A list of organizations that have been approved can be found on the Division's website or obtained by contacting the Division.

R152-42-5. Certification of Counselors.

In order to comply with the requirements of Utah Code Section 13-42-106(9), a provider must[-

~~— (1) be a member of the National Foundation for Credit Counseling;~~

~~— (2) be a member of the Association of Independent Consumer Credit Counseling Agencies;~~

~~— (3) be approved by the United States Trustees to provide credit counseling pursuant to 11 U.S.C. 111; or~~

~~— (4) show that each provider's credit counselors are certified by one of the following organizations:~~

~~— (a) the Association of Financial Counseling and Planning Education;~~

~~— (b) the National Association of Certified Credit Counselors; or~~

~~— (c) any other organization approved by the Division by rule.]~~

provide evidence that, within 12 months after initial employment, each of the applicant's counselors becomes certified as a certified counselor. A list of organizations or programs that have been approved can be found on the Division's website or by contacting the Division.

R152-42-6. Adoption of Base Year.

Pursuant to Utah Code Section 13-42-132(6), the Division adopts a base year of 2007.

KEY: debt-management, consumer protection

Date of Enactment or Last Substantive Amendment: 2007

Authorizing, and Implemented or Interpreted Law: 13-42-102(9)(c); 13-42-112(2); 13-42-132(3); 13-42-132(6)



Insurance, Administration **R590-238** Captive Insurance Companies

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 29458

Filed: 03/30/2007, 12:11

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes to this rule come from feedback the department received during the comment period and hearing on the proposed new rule.

SUMMARY OF THE RULE OR CHANGE: Almost all of the changes made to this rule are for clarification purposes only. Section R590-238-3 adds three new definitions to the rule. The definition of "Company" comes from the Code and the definition of "Work Papers" has been moved from Subsection R590-238-10(3). Subsection R590-238-4(3) reiterates what

has already been said in R590-238-4(2). Section R590-238-5 is composed mainly of grammatical corrections, corrections in code references, and wording more commonly used in actuarial circles like "reasonableness" and "Associate". Section R590-238-6 clarifies who can be approved by the commissioner to certify reserves. Section R590-238-7 moves the last sentence to the first to make a new subsection. Section R590-238-17 corrects a code citation and other changes for clarification. Section R590-238-20 eliminates subsection (3) because it is not a requirement for captive insurers. The changes in Subsection R590-238-21(4) are for clarification purposes only. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the February 15, 2007, issue of the Utah State Bulletin, on page 32. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-37-106

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The changes to this rule will have no impact on the department or state's budget. The only change that might have created impact on the budget would have been in Subsection R590-238-20(3). Even though this eliminates what appears to be a fee for the preparation and issuance of certificates and reports at the initial licensing and renewal by the Captive, it would not affect the budget because there is no such fee for captives in the department's fee rule, Rule R590-102. Nor do any of the changes result in a change to the filings received by the department.

❖ **LOCAL GOVERNMENTS:** This rule will not affect local governments since it only deals with the relationship between the department and their licensees.

❖ **OTHER PERSONS:** These rule changes will have no fiscal impact on captive insurers or their customers. No increase or reduction in fees or filings will be required. The changes are for clarification purposes, to make corrections to code references, or in the case of Section R590-238-20, to eliminate a requirement that was not relevant to captives.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These rule changes will have no fiscal impact on captive insurers or their customers. No increase or reduction in fees or filings will be required. The changes are for clarification purposes, to make corrections to code references, or in the case of Section R590-238-20, to eliminate a requirement that was not relevant to captives.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will create no fiscal impact on businesses. D. Kent Michie, Commissioner

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2007

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-238. Captive Insurance Companies.

.....

R590-238-3. Definitions.

(1) The definitions in Sections 31A-1-301 and 31A-37-102 apply to this rule.

(2) "Company" means a captive insurance company as defined in Section 31A-1-301.

(3) "Work Papers" or "working papers" include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and the accountant's employees in the conduct of their audit of the company.

R590-238-4. Annual Reporting Requirements.

(1) A captive insurance company authorized in this state shall file an annual report of its financial condition with the commissioner as required by Section 31A-37-501. The report shall be verified by oath of two of its executive officers and shall be prepared using generally accepted accounting principles ("GAAP"). The annual report may be filed electronically consistent with directions from the commissioner.

(2) An association captive insurance company, a sponsored captive insurance company, and an industrial insured captive insurance company shall observe the requirements of Section 31A-4-113 when they file an annual report on its financial condition. In addition, an industrial insured group shall observe the requirements of Section 31A-4-113.5 when it files an annual report.

(3) ~~The annual report shall be filed on the form prescribed in statute or in this rule.~~ All captive insurance companies, except those noted in Subsection R590-238-4(2), are to use the "Captive Insurance Company Annual Statement Form."

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R590-238-6. Annual Audit.

(1) All companies shall have an annual audit by an independent certified public accountant, approved by the commissioner, and shall file such audited financial report with the commissioner on or before June 30 for the preceding year ending December 31. Financial statements furnished under this section shall be prepared in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants ("AICPA").

(2) The annual audit report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the commissioner.

(3) The annual audit shall consist of the following:

(a) Opinion of Independent Certified Public Accountant

(i) Financial statements furnished pursuant to this section shall be examined by independent certified public accountants in accordance with generally accepted auditing standards as determined by the ~~American Institute of Certified Public Accountants~~ AICPA.

(ii) The opinion of the independent certified public accountant shall cover all years presented.

(iii) The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance, shall bear original manual signatures and shall be dated.

(b) Report of Evaluation of Internal Controls

(i) This report shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to, controls as the system of authorization and approval and the separation of duties.

(ii) The review shall be conducted in accordance with generally accepted auditing standards and the report shall be filed with the commissioner.

(c) Accountant's Letter

The accountant shall furnish the company, for inclusion in the filing of the audited annual report, a letter stating:

(i) that he is independent with respect to the company and conforms to the standards of his profession as contained in the Code of Professional Ethics and pronouncements of the ~~American Institute of Certified Public Accountants~~ AICPA and pronouncements of the Financial Accounting Standards Board;

(ii) the general background and experience of the staff engaged in the audit, including their experience in auditing captive or other insurance companies;

(iii) that the accountant understands that the audited annual report and his opinions thereon will be filed in compliance with this rule.

(iv) that the accountant consents to the requirements of R590-238-10;

(v) that the accountant consents and agrees to make the work papers as defined in ~~R590-238-10(3)~~ R590-238-3(3) available for review by the commissioner, his designee or his appointed agent; and

(vi) that the accountant is properly licensed by an appropriate state licensing authority ~~and is a member in good standing in the American Institute of Certified Public Accountants~~.

(d) Financial Statements

(i) The financial statements required shall be as follows:

(A) balance sheet;

(B) statement of gain or loss from operations;

(C) statement of changes in financial position;

(D) statement of cash flow;

(E) statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus); and

(F) notes to financial statements.

(ii) The notes to financial statements shall be those required by ~~generally accepted accounting principles~~ GAAP and shall include:

(A) a reconciliation of differences, if any, between the audited financial report and the statement or form filed with the commissioner;

(B) a summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive; and

(C) a narrative explanation of all material transactions with the company. For purposes of this provision, no transaction shall be deemed material unless it involves 3% or more of a company's admitted assets as of the December 31 next preceding.

(e) Certification of Loss Reserves and Loss Expense Reserves of the ~~companies~~ company's opining actuary

(i) The annual audit shall include an actuarial opinion as to the ~~adequacy~~ reasonableness of the company's loss reserves and loss expense reserves, unless waived by the commissioner.

(ii) The individual who certifies as to the ~~adequacy~~ reasonableness of reserves shall be approved by the Commissioner and shall be a Fellow or Associate of the Casualty Actuarial Society and a member in good standing of the American Academy of Actuaries, for property and casualty companies or a Fellow or Associate of the Society of Actuaries and a member in good standing of the American Academy of Actuaries for life and health companies.

(4) Certification under Subsection R590-238-6(3)(e) shall be in such form as the commissioner deems appropriate.

R590-238-7. Designation of Independent Certified Public Accountant.

(1) A certified public accountant that is retained to conduct the independent annual audit may only be appointed from the list of approved certified public accounting firms or individual certified public accountants maintained by the commissioner.

~~(2) A company that terminates the appointment of an independent certified public accountant retained to conduct the annual audit required in this rule shall report the name and address of the certified public accountant in writing to the commissioner within ninety days after the appointment is terminated and shall within the same period report the name and address of the certified public accountant that is subsequently retained. [A certified public accountant that is retained to conduct the independent annual audit may only be appointed from the list of approved certified public accountants from companies maintained by the commissioner.]~~

.....

R590-238-10. Availability and Maintenance of Working Papers of the Independent Certified Public Accountant.

(1) Each company shall require its independent certified public accountant to make all work papers prepared in the conduct of the audit of the company available for review by the commissioner or his appointed agent. The company shall require that the accountant retain the audit work papers for a period of not less than five years after the period reported upon.

(2) The review by the commissioner shall be considered an official investigation by the commissioner and all working papers obtained during the course of such investigation shall be confidential business papers and shall be classified as business confidential protected records. The company shall require that the independent

certified public accountant provide photocopies of any of the working papers that the department considers relevant. The department may retain any photocopies of working papers. [

~~(3) "Work Papers" or "working papers" as referred to in this section include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and his employees in the conduct of their audit of the company.]~~

.....

R590-238-16. Acquisition ~~or Change~~ of Control of or Merger with Domestic Company.

The acquisition ~~or change~~ of control of or merger of a domestic captive insurance company shall be regulated pursuant to Section 31A-16-103.

R590-238-17. Suspension or Revocation.

(1) The commissioner may by order suspend or revoke the license of a company or place the same on probation on the following grounds:

(a) the company has not commenced business according to its plan of operation within two years of being licensed; ~~[or]~~

(b) the company has ceased to carry on insurance business in or from within Utah; ~~[or]~~

(c) at the request of the company; or

(d) ~~[for]~~ any reason provided in Section 31A-37-505.

(2) Before the commissioner takes any action set forth under ~~[R590-238-16(1)]~~ R590-238-17(1) the commissioner shall give the company notice in writing of the grounds on which ~~he~~ the commissioner proposes to act, and shall afford the company a hearing as to such proposed action in accordance with ~~[the Utah Administrative Procedures Act, Chapter 46b.]~~ Title 63, Chapter 46b, Utah Administrative Procedures Act.

R590-238-18. Change of ~~Business~~ Information in Initial Application.

(1) Any material change in a company's business plan that was filed with the commissioner at the time of initial application and any subsequent amendment of the plan requires prior approval of the commissioner.

(2) Any change in any other information filed with the initial application must be filed with the commissioner within sixty days after the change, but does not require prior approval.

(3) The company shall immediately notify the commissioner upon making changes in board members or officers of the company.

.....

R590-238-20. Fee Schedule. Initial Application. Renewal.

(1) An applicant for a certificate of authority under the captive insurance code shall pay a nonrefundable fee established in the department's fee rule, R590-102-7 for examining, investigating, and processing its initial application for license to the commissioner at the time the application is filed.

(2) In addition, each company that is licensed by the commissioner shall pay a license fee, without proration, for the initial year of registration and a renewal fee for each succeeding year in the amount established in the department's fee rule, R590-102-7.

~~[(3) Each company shall pay an annual nonrefundable service fee each year in the amount established in the department's fee rule,~~

~~R590-102-7 to the commissioner at the time its license is renewed for the preparation and issuance of:~~

- ~~— (a) certificates of:~~
 - ~~— (i) compliance;~~
 - ~~— (ii) deposit;~~
 - ~~— (iii) application;~~
 - ~~— (iv) capital; and~~
 - ~~— (v) surplus;~~
- ~~— (b) transcript of records;~~
- ~~— (c) annual statements;~~
- ~~— (d) report of examination; and~~
- ~~— (e) other certifications as may be necessary, but excluding certificates of authority.~~

] (~~4~~) Each company shall pay an annual nonrefundable e-commerce and internet technology services fee each year in the amount established in the department's fee rule, R590-102-14(1)(b) to the commissioner.

(~~5~~) Each captive insurance company shall pay a nonrefundable fee in the amount established in the department's fee rule, R590-102-~~7~~ for photocopies of documents to the commissioner.

R590-238-21. Authorized Forms.

(1) The following forms are to be used for any applicant applying for a certificate of authority for a new captive insurance company and may be obtained from the department's captive administrator at (801)537-9174 or (801)537-9047:

- (a) "Application to Form A Captive Insurance Company;"
- (b) "Biographical Affidavit For Captive Insurance Company;"
- (c) "Utah Insurance Department Captive Insurance Company Reinsurance Exhibit;"
- (e) "Utah Approved Irrevocable Letter of Credit;"

(f) "Statement if Economic Benefit to the State of Utah;" and
(g) "Appointment Of The Insurance Commissioner For The State Of Utah As Attorney To Accept Service of Process."

(2) The following forms are to be used when applying to become an Approved captive insurance company provider and are available on the department's captive website:

- (a) "Application for Placement on Approved Captive Insurer Management Firm List;"
- (b) "Application To Certify Loss And Expense For Captive Insurance Companies Captive Actuary Application;" and
- (c) "Application For Authorization As An Independent Certified Public Accountant for Captive Insurance Companies."

(3) All captive insurance companies, except those noted in R590-238-4(2), are to use the "Captive Insurance Company Annual Statement Form."

(4) ~~The~~ A company shall file a "Statement of Economic Benefit to the State of Utah" form ~~should be filed~~ with ~~the~~ its initial application and for each of the 12 months ending December 31, of each applicable year.

(5) The forms indicated in Sections (2), (3), and (4) are available on the department's captive website, www.captive.utah.gov/licensing.html.

.....

KEY: captive insurance

**Date of Enactment or Last Substantive Amendment: 2007
Authorizing, and Implemented or Interpreted Law: 31A-2-201;
31A-37-106**



End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

Administrative Services, Administration **R13-2** Access to Records

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 29771
FILED: 04/02/2007, 15:32

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 administrative rule implements provisions of the Government Records Access and Management Act (GRAMA) as they pertain to the Department of Administrative Services. Subsection 63-2-204(2) permits the department to make administrative rules to specify where and to whom requests for access to records shall be directed. Subsection 63-2-904(2) permits the department to make administrative rules to specify at which level the requirements specified in GRAMA shall be undertaken.

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 since its last review, 05/31/2002 (DAR No. 24891, published 06/15/2002).

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This administrative rule tells citizens how they may obtain access to records prepared, owned, received, or retained by the Department of Administrative Services, its divisions, and offices. It allows the public to more easily request access to those records and the department to more efficiently act upon those requests. This administrative rule continues to be essential in the interest of open government. Therefore, this rule should be continued. As a result of this review, the department intends to file a proposed amendment to update provisions of this rule. (DAR

NOTE: See the proposed amendment to Rule R13-2 under DAR No. 29772 in this issue, April 15, 2007, of the Bulletin.)

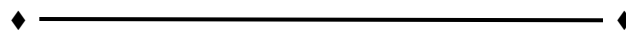
THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
ADMINISTRATION
Room 3120 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:
Kenneth A. Hansen at the above address, by phone at 801-538-3777, by FAX at 801-538-1773, or by Internet E-mail at khansen@utah.gov

AUTHORIZED BY: Kim Hood, Executive Director

EFFECTIVE: 04/02/2007



Commerce, Occupational and Professional Licensing **R156-56** Utah Uniform Building Standard Act Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 29745
FILED: 03/29/2007, 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: Title 58, Chapter 56, provides for the licensure of building inspectors and for the adoption of building codes and amendments made to those codes. Subsection 58-1-106(1)(a) provides that the Division

may adopt and enforce rules to administer Title 58. Subsection 58-56-8.5(3) provides that the Building Inspector Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the division director. Subsections 58-56-5(10)(a) and (b) provide that the Uniform Building Code Commission may recommend to the director of the Division appropriate rules with respect to building codes. This rule was enacted to clarify the provisions of Title 58, Chapter 56, with respect to the licensing of building inspectors and the adoption of building codes and amendments made thereto.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in May 2002, it has been amended several times, usually one-two times per year. In November 2002, the Division received over 100 written comments regarding proposed amendments to the rule. The written comments received by the Division are too numerous to specifically list here. However, a summary of the comments is provided. The majority of the written comments received opposed the deletion of a National Electrical Code amendment relating to arc fault circuit interrupters (AFCI) on bedroom circuits. Some of the written comments received in November 2002 supported a proposed amendment in Section R156-56-704 which removed the requirements to prevent ice and snow buildup on walking surfaces. Also, one of the written comments noted clerical errors in the proposed rule filing. As a result of this written comment, a nonsubstantive rule change was filed on 12/16/2002 to correct the clerical/typographical errors in the rule. As a result of the numerous written comments received by the Division in November 2002 and further discussion between the Division and the Uniform Building Code Commission, both of the proposed amendments regarding AFCIs and ice and snow buildup were allowed to lapse and were not made effective. On 05/15/2003, the Division received an e-mail comment from Kent Bishop (Governor's Office of Planning and Budget) suggesting some wording changes to the rule. A nonsubstantive rule filing was filed on 06/24/2003 which addressed Mr. Bishop's suggested changes. In November and December 2003, the following letters were received regarding proposed amendments to adopt the 2003 International Code Council (ICC) building codes and eliminating the International Association of Plumbing and Mechanical Officials (IAPMO) as a qualifying certification for licensure as a plumbing or mechanical building inspector: a 12/02/2003 letter was received from Dave Levanger/Carbon County Planning and Building Department opposing the proposed amendments; an undated letter from Barry Formo requesting the Commission to conduct a comparative analysis of the ICC and the C3 code sets and state amendments; a 11/20/2003 letter from Kevin Croshaw, Logan Building Inspection Division, supporting the proposed amendments; a 11/21/2003 letter from Kevin Croshaw, Logan Building Inspection Division, requesting the Commission to reconsider a proposed amendment regarding International Residential Code (IRC) exterior landings; a 11/26/2003 e-mail from Dwight Perkins, IAPMO regional manager, opposing

amendments to adopt the 2003 edition of the ICC code and licensure of inspector amendments; a 11/25/2003 e-mail from Chuck Hugo, Provo City Building Office, supporting the adoption of the proposed amendments; a 11/19/2003 e-mail from Wesley Greenhalgh, Heber City Building Official, supporting the adoption of the proposed amendment to eliminate IAPMO certification in the licensure of building inspectors; a 11/19/2003 e-mail from Mark Schmid, Morgan City Building Official, regarding evaluation of National Fire Protection Association (NFPA)/IAPMO codes in Utah; a 11/17/2003 e-mail from John Nelson, Cache County Building Official, supporting the adoption of the 2003 ICC code; and a 12/01/2003 letter from Larry E. Facer opposing the proposed rule amendment with respect to the licensure of building inspectors. All of the written comments received were reviewed by the Uniform Building Code Commission and the Division and the proposed rule amendments with no further changes were made effective on 01/01/2004. In response to proposed amendments filed with respect to the rule in April 2004, the Division received the following letters: an 04/30/2004 e-mail from Carl Eriksson suggesting grammatical changes to the rule and a 05/06/2004 letter from Kevin Croshaw, Logan Building Official, opposing an amendment regarding exterior landing requirements in the International Residential Code (IRC). As a result of written comments received and comments offered during a 05/17/2004 rule hearing, a change in proposed rule filing was filed in June 2004 to delete the proposed state amendment to the IRC regarding landing requirements and to make the suggested grammatical changes. The change in proposed rule filing was made effective on 08/17/2004. The Division received no written comments with respect to proposed rule filings made with respect to this rule in 2005. In response to proposed amendments filed with respect to the rule in October 2006, the Division received a 11/17/2006 letter and enclosures from Kenneth Mitchell, President, Utah Home Builders Association of Utah, regarding proposed amendments involving stair geometry. After further review and discussion by the Division and Uniform Building Code Commission, the Division allowed the proposed rule filing regarding stair geometry (DAR No. 29079) to lapse and not become effective.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it clarifies the provisions of Title 58, Chapter 56, with respect to building inspectors and the regulation of building codes. This rule should also be continued as it enables the state and its jurisdictions to utilize the most current building codes.

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:

Dan S. Jones at the above address, by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dansjones@utah.gov

AUTHORIZED BY: F. David Stanley, Director

EFFECTIVE: 03/29/2007

Education, Administration
R277-416

Experimental and Developmental
Programs

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

DAR FILE No.: 29746
FILED: 03/29/2007, 13:35

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-402(1)(e)(i) directs the State Board of Education to establish rules and minimum standards for school productivity and cost effectiveness measures.

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: Upon review of this rule, it was determined that the rule is no longer necessary because the program no longer exists. The rule will therefore be continued so it does not expire and a repeal will be put through the appropriate process.

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 carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 03/29/2007

Education, Administration
R277-503
Licensing Routes

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

DAR FILE No.: 29749
FILED: 03/29/2007, 13:36

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-402(1)(a) directs the State Board of Education to establish rules and minimum standards for the qualification and licensing of educators and ancillary personnel who provide direct student 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 comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule provides necessary direction and procedures for educator license applicants to become licensed. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 03/29/2007

Education, Administration
R277-507
 Driver Education Endorsement

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 29747
 FILED: 03/29/2007, 13:35

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-402(1)(a) directs the State Board of Education to establish rules and minimum standards regarding the qualification and licensing of educators and ancillary personnel who provide direct student 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 comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule provides necessary instruction and guidance for educators to obtain a driver education endorsement. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 03/29/2007



Education, Administration
R277-519
 Educator Inservice Procedures and Credit

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 29748
 FILED: 03/29/2007, 13:35

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-402(1)(a) directs the State Board of Education to establish rules and minimum standards regarding the qualification and licensing of educators and ancillary personnel who provide direct student 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 comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because it provides procedures for educators to receive inservice credit to be applied toward relicensure requirements. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 03/29/2007



Environmental Quality, Drinking Water
R309-500
 Facility Design and Operation: Plan Review, Operation and Maintenance Requirements

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 29774
 FILED: 04/02/2007, 16:14

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 19-4-104 authorizes the Drinking Water Board to make rules in accordance with Title 63, Chapter 46a, as necessary to administer the Safe Drinking Water Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received during the last five years opposing 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 establishes what projects require the submittal of plans and specifications for review and approval prior to construction of facilities for public drinking water systems throughout the state, and since the Board has not received comments opposing this rule, the Board feels it is prudent to continue this rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Bill Birkes at the above address, by phone at 801-536-4201, by FAX at 801-536-4211, or by Internet E-mail at bbirkes@utah.gov

AUTHORIZED BY: Ken Bousfield, Acting Director

EFFECTIVE: 04/02/2007

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Environmental Quality, Drinking Water

R309-505

**Facility Design and Operation:
Minimum Treatment Requirements**

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29775
FILED: 04/02/2007, 16:15

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: Section 19-4-104 authorizes the Drinking Water Board to make rules in accordance with

Title 63, Chapter 46a, as necessary to administer the Safe Drinking Water Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received during the last five years opposing 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 establishes the minimum treatment requirements for various types of water sources for public drinking water systems throughout the state, and since the Board has not received comments opposing this rule, the Board feels it is prudent to continue this rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Bill Birkes at the above address, by phone at 801-536-4201, by FAX at 801-536-4211, or by Internet E-mail at bbirkes@utah.gov

AUTHORIZED BY: Ken Bousfield, Acting Director

EFFECTIVE: 04/02/2007



Environmental Quality, Drinking Water

R309-510

**Facility Design and Operation:
Minimum Sizing Requirements**

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29776
FILED: 04/02/2007, 16:15

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: Section 19-4-104 authorizes the Drinking Water Board to make rules in accordance with Title 63, Chapter 46a, as necessary to administer the Safe Drinking Water Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received during the last five years opposing 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 establishes the minimum recommended size for drinking water facilities such as sources, storage tanks, and pipelines for public drinking water systems throughout the state, and since the Board has not received comments opposing this rule, the Board feels it is prudent to continue this rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Bill Birkes at the above address, by phone at 801-536-4201, by FAX at 801-536-4211, or by Internet E-mail at bbirkes@utah.gov

AUTHORIZED BY: Ken Bousfield, Acting Director

EFFECTIVE: 04/02/2007

◆ ————— ◆

Environmental Quality, Drinking Water
R309-515
Facility Design and Operation: Source
Development

FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

DAR FILE No.: 29777
FILED: 04/02/2007, 16:16

NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-4-104 authorizes the Drinking Water Board to make rules in accordance with Title 63, Chapter 46a, as necessary to administer the Safe Drinking Water Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received during the last five years opposing 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 establishes minimum construction requirements for developing sources of water for public drinking water systems throughout the state, and since the Board has not received comments opposing this rule, the Board feels it is prudent to continue this rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Bill Birkes at the above address, by phone at 801-536-4201, by FAX at 801-536-4211, or by Internet E-mail at bbirkes@utah.gov

AUTHORIZED BY: Ken Bousfield, Acting Director

EFFECTIVE: 04/02/2007

◆ ————— ◆

Environmental Quality, Drinking Water
R309-525
Facility Design and Operation:
Conventional Surface Water Treatment

FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

DAR FILE No.: 29778
FILED: 04/02/2007, 16:16

NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-4-104 authorizes the Drinking Water Board to make rules in accordance with Title 63, Chapter 46a, as necessary to administer the Safe Drinking Water Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received during the last five years opposing 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 specifies requirements for conventional surface water treatment plants used in public drinking water systems throughout the state, and since the Board has not received comments opposing this rule, the Board feels it is prudent to continue this rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Bill Birkes at the above address, by phone at 801-536-4201, by FAX at 801-536-4211, or by Internet E-mail at bbirkes@utah.gov

AUTHORIZED BY: Ken Bousfield, Acting Director

EFFECTIVE: 04/02/2007

◆ ————— ◆

Environmental Quality, Drinking Water
R309-530
Facility Design and Operation:
Alternative Surface Water Treatment
Methods

FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

DAR FILE No.: 29779
 FILED: 04/02/2007, 16:17

NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-4-104 authorizes the Drinking Water Board to make rules in accordance with Title 63, Chapter 46a, as necessary to administer the Safe Drinking Water Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received during the last five years opposing 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 specifies requirements for alternative surface water treatment methods used by public drinking water systems throughout the state, and since the Board has not received comments opposing this rule, the Board feels it is prudent to continue this rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Bill Birkes at the above address, by phone at 801-536-4201, by FAX at 801-536-4211, or by Internet E-mail at bbirkes@utah.gov

AUTHORIZED BY: Ken Bousfield, Acting Director

EFFECTIVE: 04/02/2007

◆ ————— ◆

Environmental Quality, Drinking Water
R309-535
Facility Design and Operation:
Miscellaneous Treatment Methods

FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

DAR FILE No.: 29780
 FILED: 04/02/2007, 16:17

NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-4-104 authorizes the Drinking Water Board to make rules in accordance with Title 63, Chapter 46a, as necessary to administer the Safe Drinking Water Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received during the last five years opposing 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 provides specific requirements for miscellaneous water treatment methods which are primarily intended to remove chemical contaminants from drinking water; or adjust the chemical composition of drinking water used by public drinking water systems throughout the state, and since the Board has not received comments opposing this rule, the Board feels it is prudent to continue this rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Bill Birkes at the above address, by phone at 801-536-4201, by FAX at 801-536-4211, or by Internet E-mail at bbirkes@utah.gov

AUTHORIZED BY: Ken Bousfield, Acting Director

EFFECTIVE: 04/02/2007

Environmental Quality, Drinking Water
R309-540
Facility Design and Operation: Pump
Stations

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

DAR FILE NO.: 29781
FILED: 04/02/2007, 16:18

**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 19-4-104 authorizes the Drinking Water Board to make rules in accordance with Title 63, Chapter 46a, as necessary to administer the Safe Drinking Water Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received during the last five years opposing 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 provides specific requirements for pump stations utilized to deliver drinking water to facilities of public drinking water systems throughout the state, and since the Board has not received comments opposing this rule, the Board feels it is prudent to continue this rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Bill Birkes at the above address, by phone at 801-536-4201, by FAX at 801-536-4211, or by Internet E-mail at bbirkes@utah.gov

AUTHORIZED BY: Ken Bousfield, Acting Director

EFFECTIVE: 04/02/2007



Environmental Quality, Drinking Water
R309-545
Facility Design and Operation: Drinking
Water Storage Tanks

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

DAR FILE NO.: 29782
FILED: 04/02/2007, 16:18

**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 19-4-104 authorizes the Drinking Water Board to make rules in accordance with Title 63, Chapter 46a, as necessary to administer the Safe Drinking Water Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received during the last five years opposing 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 provides specific requirements for water storage tanks utilized by public drinking water systems throughout the state, and since the Board has not received comments opposing this rule, the Board feels it is prudent to continue this rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Bill Birkes at the above address, by phone at 801-536-4201, by FAX at 801-536-4211, or by Internet E-mail at bbirkes@utah.gov

AUTHORIZED BY: Ken Bousfield, Acting Director

EFFECTIVE: 04/02/2007



Environmental Quality, Drinking Water
R309-550
Facility Design and Operation:
Transmission and Distribution Pipelines

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

DAR FILE NO.: 29783
FILED: 04/02/2007, 16:19

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: Section 19-4-104 authorizes the Drinking Water Board to make rules in accordance with Title 63, Chapter 46a, as necessary to administer the Safe Drinking Water Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received during the last five years opposing 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 provides specific requirements for the design and installation of transmission and distribution pipelines utilized by public drinking water systems throughout the state, and since the Board has not received comments opposing this rule, the Board feels it is prudent to continue this rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 DRINKING WATER
 150 N 1950 W
 SALT LAKE CITY UT 84116-3085, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Bill Birkes at the above address, by phone at 801-536-4201, by FAX at 801-536-4211, or by Internet E-mail at bbirkes@utah.gov

AUTHORIZED BY: Ken Bousfield, Acting Director

EFFECTIVE: 04/02/2007



**Environmental Quality, Drinking Water
 R309-700
 Financial Assistance: State Drinking
 Water Project Revolving Loan Program**

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29784
 FILED: 04/02/2007, 16:19

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: Section 73-10c-8 authorizes the Drinking Water Board to make rules in accordance with

Title 63, Chapter 46a, as necessary to administer Title 73, Chapter 10c, and applicants for financial assistance under its provisions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received during the last five years opposing this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to continue funding assistance to public drinking water systems and since the Board has received comments expressing the continued need for such a program from public drinking water systems throughout the state, the Board feels it is prudent to continue this rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 DRINKING WATER
 150 N 1950 W
 SALT LAKE CITY UT 84116-3085, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Bill Birkes at the above address, by phone at 801-536-4201, by FAX at 801-536-4211, or by Internet E-mail at bbirkes@utah.gov

AUTHORIZED BY: Ken Bousfield, Acting Director

EFFECTIVE: 04/02/2007



**Environmental Quality, Drinking Water
 R309-705
 Financial Assistance: Federal Drinking
 Water Project Revolving Loan Program**

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29785
 FILED: 04/02/2007, 16:19

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: Section 73-10c-8 authorizes the Drinking Water Board to make rules in accordance with Title 63, Chapter 46a, as necessary to administer Title 73, Chapter 10c, and applicants for financial assistance under its provisions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received during the last five years opposing this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to continue receiving funding from the federal government under the financial assistance provisions of the federal safe drinking water act and since the Board has received comments expressing the continued need for such a program from public drinking water systems throughout the state, the Board feels it is prudent to continue this rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Bill Birkes at the above address, by phone at 801-536-4201, by FAX at 801-536-4211, or by Internet E-mail at bbirkes@utah.gov

AUTHORIZED BY: Ken Bousfield, Acting Director

EFFECTIVE: 04/02/2007



**Environmental Quality, Solid and
 Hazardous Waste
 R315-304
 Industrial Solid Waste Facility
 Requirements**

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**
 DAR FILE No.: 29754
 FILED: 03/30/2007, 16:20

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-6-104(1)(j) requires the Solid and Hazardous Waste Control Board to require any facility disposing of nonhazardous waste to submit plans, specifications, and other information required by the Board prior to the construction and/or operation of a facility. Subsection 19-6-108(12) requires that operation plans be reviewed every five years. The rule sets out the procedures and information that must be submitted to receive a plan approval and meet the requirements of the statute.

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 rule was modified once since the last five-year review. One comment was received on the change requiring a facility to do a survey of historic resources on the land within the boundaries of the facility. The commenter was concerned that the survey would have to be done every time a new cell was opened at the site or each time a new permit was issued. The commenter had not interpreted the rule correctly. The rule change required a survey to be conducted only once on the site unless the boundaries of the site were expanded. A site expansion would require a survey of the new area only. The rule change was made to implement the requirements of Section 9-8-404.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary to implement the requirements of the statute to review plans for facilities that dispose of nonhazardous solid waste. Therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY
 SOLID AND HAZARDOUS WASTE
 288 N 1460 W
 SALT LAKE CITY UT 84116-3231, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ralph Bohn at the above address, by phone at 801-538-6794, by FAX at 801-538-6715, or by Internet E-mail at Rbohn@utah.gov

AUTHORIZED BY: Dennis Downs, Director

EFFECTIVE: 03/30/2007



**Health, Epidemiology and Laboratory
 Services, Epidemiology
 R386-702
 Communicable Disease Rule**

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**
 DAR FILE No.: 29721
 FILED: 03/22/2007, 12:35

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Communicable Disease Rule is authorized by Subsection 26-1-30(2), the Communicable Disease Control Act (Title 26, Chapter 6), and by the Detection of Public Health Emergencies Act (Title 26,

Chapter 23b). These provisions require the Department of Health to promote and protect the public's health by identifying, investigating, and controlling diseases that would be detrimental to the community, including those that are naturally occurring, and those that may indicate an act of bioterrorism. The Communicable Disease Rule defines the conditions that are reportable; specifies who is required to report diseases and how; and explains other specific details as to how the Department of Health is authorized to deal with these types of conditions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments opposing the rule were received. The rule has been updated several times since the last five-year review, and comments are always solicited from partners including Local Health Department staff (e.g. Local Health Officers, Nursing Directors, Epidemiology staff), hospital Infection Control Practitioners, and community physicians; and all comments received during these updates have been positive as to the need for the rule. There has been no indication of opposition from these partners or the public.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Communicable Disease Rule must be continued in order to enable the Department of Health and local health departments to continue to promote and protect the public's health as described above, and as required by state statute.

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

HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES,
EPIDEMIOLOGY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Melissa Stevens Dimond at the above address, by phone at 801-538-6810, by FAX at 801-538-9923, or by Internet E-mail at melissastevens@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 03/22/2007

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Health, Epidemiology and Laboratory
Services, Environmental Services
R392-100
Food Service Sanitation

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

DAR FILE NO.: 29722
FILED: 03/22/2007, 13:05

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsection 26-1-30(2) and Section 26-15-2. Subsection 26-1-30(2)(u) authorizes the Department to adopt rules and enforce minimum sanitary standards for the operation and maintenance of restaurants and all other places where food is handled for commercial purposes, sold, or served to the public. Section 26-15-2 outlines the minimum rules of sanitation to be established by the Department of Health, including restaurants and all places where food or drink is handled, sold, or served to the public.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: While the Bureau of Epidemiology has not received comments opposing the rule, comments have been received from Local Health Departments, Local Environmental Health Directors, and the food code revision work group regarding different aspects of the rule. All comments were responded to as part of our process to develop modifications to the rule. In August of 2005, the U.S. Food and Drug Administration (FDA) released the update of its model code as the 2005 FDA Food Code. Comments received from the local health departments indicate a desire for the state rule to be updated to include provisions now included in the 2005 model FDA Food Code.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R392-100 is the statewide rule that establishes guidelines to industry for food service sanitation. It is the rule that local health departments rely on to enforce food sanitation. The rule is the basis for consistent and uniform enforcement of food service sanitation across all areas of the state. The FDA has concluded that food borne illness in the United States is a major cause of personal distress, preventable death, and avoidable economic burden. The main purpose of Rule R392-100 is to prevent food borne illness, hospitalizations that occur due to food borne illness, and the rare instances of serious disease and death. The Bureau of Epidemiology has not received comments in opposition to the rule, but has received comments from local health departments, local Environmental Health Directors, the food safety coalition, and the Food Code work group. Based on the comments received, this rule is necessary as: 1) the standard established by which industry serves food to the public, 2) the standard by which regulatory authorities enforce sanitation, and 3) the standard to which the public looks for protection from disease when it is served food at food service establishments. Therefore, this rule should be continued.

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

HEALTH
 EPIDEMIOLOGY AND LABORATORY SERVICES,
 ENVIRONMENTAL SERVICES
 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:
 Ronald Marsden at the above address, by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 03/22/2007



**Health, Epidemiology and Laboratory
 Services, Environmental Services
 R392-302
 Design, Construction and Operation of
 Public Pools**

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**
 DAR FILE No.: 29720
 FILED: 03/22/2007, 12:08

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsections 26-1-30(2) and 26-1-30(2)(u) which authorize the Department to adopt rules and enforce minimum sanitary standards for the operation and maintenance of swimming pools, public baths, and bathing beaches.

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 Office of Epidemiology has not received any written comments either supporting or opposing the entire rule. An ongoing committee (the Pool Advisory Committee) composed of local regulators, pool service and construction people, and pool operators meets regularly to discuss any issue about pools that may come from any source. The Committee provides the Office of Epidemiology recommendations for changes to the rule in response to those issues. Other sources of comments about particular parts of the rule have come from the local health department directors and from local environmental health directors. Some of the most significant issues reviewed include: how or whether pools operated as a part of medical practices should be regulated, whether private pools used for

swimming lessons should be regulated, whether sand beach pools should be allowed, whether divers are protected adequately by depth requirements and posted warning signs, whether pool circulation inlet requirements provide adequate mixing of pool water, whether outlet requirements protect swimmers from suction entrapment, whether the requirements for lifeguard stations and lifeguard practices are both protective and practicable, whether the required testing of pools could be reduced if a pool has an automatic monitoring system, whether bather load restrictions are both safe and allow pool operators a fair profit, and whether geothermal pools should be allowed certain exemptions to the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is a very important aspect of public health and safety protection. Even those who have argued about aspects of the rule have never said the rule was not needed. As highlighted in the 12/22/2006 Morbidity and Mortality Weekly Report (MMWR) publication of the Centers for Disease Control, public pools have a high potential for transmission of disease. The U.S. Consumer Product Safety Commission has also highlighted many safety issues with public pools. Proper regulation of public pools is a key aspect to reducing those risks. Therefore, this rule should be continued.

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

HEALTH
 EPIDEMIOLOGY AND LABORATORY SERVICES,
 ENVIRONMENTAL SERVICES
 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:
 Ronald Marsden at the above address, by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 03/22/2007



**Natural Resources; Forestry, Fire and
 State Lands
 R652-1
 Definition of Terms**

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**
 DAR FILE No.: 29756
 FILED: 04/02/2007, 07:32

**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 implements Subsection 654A-1-4(2) which authorizes the Division of Forestry, Fire and State Lands to provide definitions which apply to all rules promulgated by the division unless otherwise noted.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received to date.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because there is a dependent relationship between this rule and others rules using the definitions contained herein. Therefore, this rule should be continued.

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

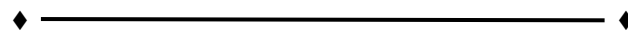
NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dave Grierson at the above address, by phone at 801-538-5504, by FAX at 801-533-4111, or by Internet E-mail at davegrierson@utah.gov

AUTHORIZED BY: Richard J Buehler, Interim Director

EFFECTIVE: 04/02/2007



**Natural Resources; Forestry, Fire and
State Lands**

R652-3

**Applicant Qualifications and Application
Forms**

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

DAR FILE NO.: 29758
FILED: 04/02/2007, 07:34

**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 implements

Sections 65A-6-2 and 65A-7-1 which authorize the Division of Forestry, Fire and State Lands to prescribe the applicant requirements and the form of application.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received to date.

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 prescribes current procedures used by applicants for the purchase, exchange, or use of sovereign lands or resources.

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dave Grierson at the above address, by phone at 801-538-5504, by FAX at 801-533-4111, or by Internet E-mail at davegrierson@utah.gov

AUTHORIZED BY: Richard J Buehler, Interim Director

EFFECTIVE: 04/02/2007



**Natural Resources; Forestry, Fire and
State Lands**

R652-4

Application Fees and Assessments

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

DAR FILE NO.: 29761
FILED: 04/02/2007, 07:36

**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 implements Subsection 65A-1-4(2) which authorizes the Division of Forestry, Fire and State Lands to adopt rules necessary to fulfill the purposes of Title 65A.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received to date.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Title 65A, Chapter 6, makes reference to application fees. This rule should be continued because it outlines how fees are established for the various activities on sovereign and state lands and the availability of that fee schedule.

legitimate requirement for other mineral lease obligations and other land use authorizations issued by the division. In the conduct of business, it is important that the division's customers understand how and when payments are to be made and how failure to make payments may affect the business relationship. Therefore, this rule should be continued.

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dave Grierson at the above address, by phone at 801-538-5504, by FAX at 801-533-4111, or by Internet E-mail at davegrierson@utah.gov

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dave Grierson at the above address, by phone at 801-538-5504, by FAX at 801-533-4111, or by Internet E-mail at davegrierson@utah.gov

AUTHORIZED BY: Richard J Buehler, Interim Director

AUTHORIZED BY: Richard J Buehler, Interim Director

EFFECTIVE: 04/02/2007

EFFECTIVE: 04/02/2007

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**Natural Resources; Forestry, Fire and
State Lands
R652-5
Payments, Royalties, Audits, and
Reinstatements**

◆ ————— ◆

**Natural Resources; Forestry, Fire and
State Lands
R652-6
Government Records Access and
Management**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**
DAR FILE No.: 29757
FILED: 04/02/2007, 07:33

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**
DAR FILE No.: 29766
FILED: 04/02/2007, 07:39

**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 implements Subsection 65A-1-4(2) which authorizes the Division of Forestry, Fire and State Lands to adopt rules necessary to fulfill the purposes of Title 65A.

**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 provides procedures for appropriate access to division records. This rule is authorized by Sections 63-2-204, 63-2-603, 63-2-904, 65A-1-10, and 65A-6-7.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received to date.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received to date.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Title 65A, Chapter 6, requires that mineral leases contain requirements for prompt payment of rent in advance. Prompt payments are a

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The division is the repository for some government records dating back to early statehood, as well as records relevant to current land use

authorizations issued by the division. It is appropriate that procedures for access to division records be provided through rulemaking. Therefore, this rule should be continued.

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dave Grierson at the above address, by phone at 801-538-5504, by FAX at 801-533-4111, or by Internet E-mail at davegrierson@utah.gov

AUTHORIZED BY: Richard J Buehler, Interim Director

EFFECTIVE: 04/02/2007

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**Natural Resources; Forestry, Fire and
State Lands
R652-20
Mineral Resources**

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

DAR FILE No.: 29760
FILED: 04/02/2007, 07:35

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule implements Section 65A-6-2 which authorizes the Division of Forestry, Fire and State Lands to establish rules for the issuance of mineral leases and management of state-owned lands and mineral resources.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received to date.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The division continues to issue mineral leases on state land, and believes application of the rule to be necessary in order for the division to fulfill its public trust responsibility. Therefore, this rule should be continued.

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dave Grierson at the above address, by phone at 801-538-5504, by FAX at 801-533-4111, or by Internet E-mail at davegrierson@utah.gov

AUTHORIZED BY: Richard J Buehler, Interim Director

EFFECTIVE: 04/02/2007

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**Natural Resources; Forestry, Fire and
State Lands
R652-30
Special Use Leases**

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

DAR FILE No.: 29759
FILED: 04/02/2007, 07:35

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule implements Section 65A-7-1 which authorizes the Division of Forestry, Fire and State Lands to prescribe standards and conditions for the leasing and development of surface resources on state lands.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received to date.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The division continues to issue land use authorization including leases, exchanges, and other dispositions of sovereign land. The rationale behind the original statutory rulemaking authority is still valid. Therefore, this rule should be continued.

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS

1594 W NORTH TEMPLE
 SUITE 3520
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Dave Grierson at the above address, by phone at 801-538-5504, by FAX at 801-533-4111, or by Internet E-mail at davegrierson@utah.gov

AUTHORIZED BY: Richard J Buehler, Interim Director

EFFECTIVE: 04/02/2007

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**Natural Resources; Forestry, Fire and
 State Lands
 R652-40
 Easements**

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

DAR FILE NO.: 29767
 FILED: 04/02/2007, 07:40

**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 implements Section 65A-7-8 which authorizes the Division of Forestry, Fire and State Lands to establish rules for the issuance of easements on, through, and over any sovereign land, and to establish price schedules for this use.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received to date.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The division continues to issue easements on sovereign land. The rationale behind the original rulemaking authority is still valid. Therefore, this rule should be continued.

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

NATURAL RESOURCES
 FORESTRY, FIRE AND STATE LANDS
 1594 W NORTH TEMPLE
 SUITE 3520
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Dave Grierson at the above address, by phone at 801-538-

5504, by FAX at 801-533-4111, or by Internet E-mail at davegrierson@utah.gov

AUTHORIZED BY: Richard J Buehler, Interim Director

EFFECTIVE: 04/02/2007

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**Natural Resources; Forestry, Fire and
 State Lands
 R652-50
 Range Management**

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

DAR FILE NO.: 29764
 FILED: 04/02/2007, 07:39

**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 implements Section 65A-9-2 which authorizes the Division of Forestry, Fire and State Lands to establish rules prescribing standards and conditions for the utilization of forage and related development of range resources on sovereign lands.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received to date.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The division continues to issue grazing permits on sovereign land. Therefore, this rule should be continued.

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

NATURAL RESOURCES
 FORESTRY, FIRE AND STATE LANDS
 1594 W NORTH TEMPLE
 SUITE 3520
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Dave Grierson at the above address, by phone at 801-538-5504, by FAX at 801-533-4111, or by Internet E-mail at davegrierson@utah.gov

AUTHORIZED BY: Richard J Buehler, Interim Director

EFFECTIVE: 04/02/2007

Natural Resources; Forestry, Fire and
State Lands
R652-60
Cultural Resources

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

DAR FILE NO.: 29755
FILED: 04/02/2007, 07:31

**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 65A-2-2(1) requires that the division develop planning procedures for cultural resources on sovereign land, and Section 9-8-404 requires that state agencies take into account the effect of land management actions on cultural resources. This rule specifies how the statutory requirements are implemented.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received to date.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The division continues to authorize or undertake land use actions which have the potential to affect cultural resources. The rule is appropriate as long as this is the case. Therefore, this rule should be continued.

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dave Grierson at the above address, by phone at 801-538-5504, by FAX at 801-533-4111, or by Internet E-mail at davegrierson@utah.gov

AUTHORIZED BY: Richard J Buehler, Interim Director

EFFECTIVE: 04/02/2007



Natural Resources; Forestry, Fire and
State Lands
R652-70
Sovereign Lands

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

DAR FILE NO.: 29765
FILED: 04/02/2007, 07:39

**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 was promulgated under general rulemaking authority in Section 65A-1-4 which specifies that the division is the executive authority for the management of sovereign lands. In combination with other rules, this rule provides the management framework for sovereign lands.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received to date.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Public trust management of sovereign lands is a statehood obligation that will exist in perpetuity. Therefore, this rule should be continued.

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dave Grierson at the above address, by phone at 801-538-5504, by FAX at 801-533-4111, or by Internet E-mail at davegrierson@utah.gov

AUTHORIZED BY: Richard J Buehler, Interim Director

EFFECTIVE: 04/02/2007



Natural Resources; Forestry, Fire and
State Lands
R652-90
Sovereign Land Management Planning

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

DAR FILE No.: 29763
FILED: 04/02/2007, 07:38

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule implements Sections 65A-2-2 and 65A-2-4 which require that planning procedures be developed for sovereign lands, and for the opportunity for the public to participate in the planning process.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received to date.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule will be necessary as long as the division conducts sovereign land management planning and issues associated with land use authorizations. Therefore, this rule should be continued.

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dave Grierson at the above address, by phone at 801-538-5504, by FAX at 801-533-4111, or by Internet E-mail at davegrierson@utah.gov

AUTHORIZED BY: Richard J Buehler, Interim Director

EFFECTIVE: 04/02/2007

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Natural Resources; Forestry, Fire and
State Lands
R652-100
Materials Permits

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

DAR FILE No.: 29762
FILED: 04/02/2007, 07:37

**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 implements Section 65A-7-1 which authorizes the Division of Forestry, Fire and State Lands to prescribe division objectives, standards, and conditions for the issuance of materials permits and for conveyances for common varieties of sand, gravel, cinders, and similar materials on sovereign lands.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received to date.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Although a relatively infrequent occurrence, materials permits continue to be issued by the division. Therefore, this rule should be continued.

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dave Grierson at the above address, by phone at 801-538-5504, by FAX at 801-533-4111, or by Internet E-mail at davegrierson@utah.gov

AUTHORIZED BY: Richard J Buehler, Interim Director

EFFECTIVE: 04/02/2007

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Public Safety, Administration
R698-100
Possession of Firearms, Ammunition,
Dangerous Weapons, Explosives,
Chemical and Incendiary Devices in
Olympic Venue Secure Areas

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

DAR FILE No.: 29787
FILED: 04/02/2007, 16:39

**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: Rule R698-100 was enacted under the provisions of Section 53-12-301.1. That section was repealed on 07/01/2003 (see Chapter 49, Laws of Utah 2002).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received since the rule was enacted on 12/19/2001.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The need for the rule has passed and the specific underlying statutory authority has been repealed. The rule will therefore be continued so it does not expire and a repeal will be put through the appropriate process. (DAR NOTE: The proposed repeal of Rule R689-100 is under DAR No. 29728 in this issue, April 15, 2007, of the Bulletin.)

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

PUBLIC SAFETY
ADMINISTRATION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 1ST FLR
SALT LAKE CITY UT 84119-5994, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Richard D. Wyss at the above address, by phone at 801-965-4794, by FAX at 801-366-0221, or by Internet E-mail at rwyss@utah.gov

AUTHORIZED BY: Scott T Duncan, Commissioner

EFFECTIVE: 04/02/2007

Public Safety, Driver License

R708-8

Review Process: Driver License
Medical Section

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

DAR FILE No.: 29723
FILED: 03/23/2007, 08:49

**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: As per Section 53-3-303 a person has the right, within 10 days of division action, to request a review with the Driver License Medical Advisory Board when the division has restricted or denied an applicant or licensee's driving privilege due to physical, mental, or emotional conditions which may impair his ability to safely operate a motor vehicle.

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 is necessary so individuals can appeal an action by the division in accordance with Section 53-3-303. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

AUTHORIZED BY: Nannette Rolfe, Director

EFFECTIVE: 03/23/2007

Public Safety, Driver License

R708-21

Third-Party Testing

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

DAR FILE No.: 29727
FILED: 03/23/2007, 10:58

**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: Sections 53-3-213 and 53-3-407, and 49 CFR 383.75 establish standards and procedures for third-party testers who enter into an agreement with the state to administer skills tests to commercial drivers.

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 is necessary so third-party testers can continue to enter into an agreement with the state to do third-party testing for commercial drivers. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Vinn Roos at the above address, by phone at 801-965-4456, by FAX at 801-964-4482, or by Internet E-mail at vroos@utah.gov

AUTHORIZED BY: Nannette Rolfe, Director

EFFECTIVE: 03/23/2007



Public Safety, Driver License
R708-25
Commercial Driver License Applicant
Fitness Certification

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 29734
FILED: 03/26/2007, 15:31

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: In issuing commercial driver licenses, every Commercial Driver License (CDL) applicant must as per Section 53-3-407 either certify compliance with federal fitness standards contained in 49 CFR 391.41, 43, and 45 or certify that he/she is not subject to such standards. Each applicant who is subject to fitness standards contained in 49 CFR 391 shall be required to show proof that he/she complies with the standards.

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 is necessary so commercial driver licenses can be issued to individuals who qualify and meet the federal requirements for fitness standards. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Vinn Roos at the above address, by phone at 801-965-4456, by FAX at 801-964-4482, or by Internet E-mail at vroos@utah.gov

AUTHORIZED BY: Nannette Rolfe, Director

EFFECTIVE: 03/26/2007



Public Safety, Driver License
R708-27
Certification of Driver Education
Teachers in the Public Schools to
Administer Knowledge and Driving
Skills Tests

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 29729
FILED: 03/23/2007, 16:48

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53A-13-208 establishes standards and procedures to certify teachers in the public schools to administer knowledge and driving skills tests.

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 is necessary so standards and procedures can be established as per statute that allow the division to certify teachers who teach driver

education in the public schools so they can administer knowledge and skill tests. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

AUTHORIZED BY: Nannette Rolfe, Director

EFFECTIVE: 03/23/2007

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Public Safety, Fire Marshal **R710-8** Day Care Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29706
FILED: 03/16/2007, 13:50

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53-7-204 directs the Utah Fire Prevention Board to enact rules establishing minimum standards for the prevention of fire and for the protection of life and property against fire and panic in a number of different occupancies to include day care centers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: During the last five-year period, Rule R710-8 has been amended four times, three substantive amendments and one nonsubstantive amendment. In the last five-year period, there has not been a written comment either supporting or opposing the existing or proposed rule amendments. It has been the policy of the Utah Fire Prevention Board to attempt to notify all parties involved with or affected by a rule amendment, and receive comment from those affected during the regularly scheduled Board meetings. After receiving any comments and appropriate resolution to the concerns, the Board votes on the amendment and directs it be sent to the Division Administrative Rules for public comment. This normally prevents written comments being submitted during the 30-day public comment period due

to the resolution of any concerns during the regularly scheduled Board meetings.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: R710-8 has been in effect for over 20 years. Rule R710-8 establishes a reasonable degree of fire and life safety to children and adults who are placed in the care of adults other than a parent, relative, or guardian. These minimum standards are in effect for day care facilities in either homes or commercial establishments. These standards ensure that those clients who by age or handicap are unable to care for themselves in an emergency are provided with adequate standards to ensure their safety in an emergency. Therefore, this rule should be continued.

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

PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

AUTHORIZED BY: Ron L. Morris, Utah State Fire Marshal

EFFECTIVE: 03/16/2007

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Tax Commission, Administration **R861-1A** Administrative Procedures

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29713
FILED: 03/20/2007, 16:23

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: Section 41-1a-209 requires the Motor Vehicle Division to supply automobile registration forms; specifies what the forms shall include. Section 59-1-205 requires the governor to appoint one member of the Commission as chairperson; three members of the Commission constitute a quorum for the transaction of business; requires that the Commission be in session during regular business hours; and allows the Commission to hold sessions or conduct business at any place in the state. Section 59-1-207 requires the Tax Commission to prepare

and implement a plan for the administration of the divisions and other offices in the Tax Commission, that do not report directly to the Commission; and lists duties and responsibilities to be delegated to the executive director. Section 59-1-210 defines powers and duties of the Tax Commission; and includes power to adopt rules and policies consistent with the Constitution and laws of the State of Utah.

Section 59-1-301 allows a taxpayer to pay under protest and outlines the actions to recover the taxes paid under protest. Section 59-1-304 places limitations on when a class action may be maintained on an action that relates to a tax or a fee; and indicates who may be included in the class action; and places limitations on the recovery by members of a class. Section 59-1-401 establishes penalties for failure to file a tax return or failure to pay tax, including criminal penalties. Section 59-1-404 defines the commercial information and limits the disclosure of commercial information obtained from a property taxpayer. Section 59-1-501 allows any taxpayer in the state to file a request for agency action, petitioning the Commission for redetermination of a deficiency. Section 59-1-502.5 requires an initial hearing to be held at least 30 days before any formal hearing is held; and outlines procedures of initial hearing. Section 59-1-611 requires a taxpayer who is seeking judicial review of a Commission decision to post a bond or deposit the full amount of the taxes, interest, and penalties with the Commission unless the taxpayer meets certain requirements that satisfy a waiver of this requirement. Section 59-1-705 provides that penalties and interest shall be assessed and collected in the same manner as taxes. Section 59-2-212 requires the Tax Commission to equalize and adjust the valuation of all taxable property in the state; and allows the Tax Commission to reassess any property it feels has been under or over assessed. Section 59-2-704 requires the Commission to publish studies designed to determine the relationship between the market value shown on the assessment roll and the market value of property in each county; requires the Commission to order each county to factor or adjust assessment rates using the most current Commission studies, provides penalties if a county fails to properly implement adjustments; and allows the Commission to establish procedures for factor order hearings. Section 59-2-1004 sets guidelines for appeals of property tax assessments to the county board of equalization. Section 59-2-1006 provides that persons who are not satisfied with the decision of the board of equalization concerning the assessment and equalization of property may appeal that decision to the Tax Commission; provides procedures for appealing the board of equalization decision; and indicates the Tax Commission duties in such an appeal. Section 59-2-1007 sets guidelines for appeals of property tax assessments; and requires Tax Commission to provide adequate notice to the county when adjusting an assessment. Section 59-5-104 requires producers of oil or gas within the state to file an annual statement with the Tax Commission. Section 59-5-204 requires those engaged in mining or extracting metalliferous minerals to file an annual statement with the Tax Commission.

Section 59-6-104 applies provisions of Title 59, Chapter 10, Part 4, individual income tax withholding, to withholding of mineral production taxes. Section 59-7-506 requires corporations to keep records relating to corporate franchise and income tax. Section 59-7-517 allows the Tax

Commission to send a notice of deficiency if the commission determines that there is a deficiency in a taxpayer's corporate franchise tax. Section 59-8-105 requires a semiannual return from those upon whom the gross receipts tax is imposed. Section 59-8a-105 requires a semiannual return from electrical corporations that are subject to the gross receipts tax. Section 59-10-501 requires individual taxpayers to maintain records of income tax liability. Section 59-10-512 requires returns to be signed in accordance with forms or rules prescribed by the Tax Commission; and requires partnership returns to be signed by any one of the partners. Section 59-10-533 allows a taxpayer to file a written petition requesting redetermination of the denial of a claim for refund. Section 59-12-107 provides guidelines for collection, remittance, and payment of sales and use tax. Section 59-12-111 requires all those who possess a license to keep records of all sales made; and it provides a penalty for those without a sales tax license or use tax registration who have a liability, but do not file a sales and use tax return. Section 59-12-114 permits a taxpayer to object to a notice of deficiency or notice of assessment. Section 59-13-206 outlines monthly statements to be filed by every distributor of motor fuel; and it provides a penalty for failure to file the monthly statement. Section 59-13-210 allows the Tax Commission to promulgate rules to administer motor fuel tax; and it also allows the examination of monthly reports filed by motor fuel distributors.

Section 59-13-211 requires distributors to keep a record of all purchases, receipts, sales, and distribution of motor fuel. Section 59-13-307 requires suppliers of special fuel to file a monthly report with the Tax Commission; and it provides a penalty for non-filers. Section 59-13-312 requires users, suppliers, and any other person importing, manufacturing, refining, dealing in, transporting, or storing special fuel to keep records to substantiate all activity of that fuel; records to be kept for a period of three years. Section 59-13-403 applies all administrative and penalty provisions of Part 2, Motor Fuel, to Part 4, Aviation Fuel. Section 59-14-303 requires quarterly returns and payment of tax on all tobacco products; and it provides penalties for failure to file return or pay tax. Section 59-15-105 requires monthly returns to be filed by all those importing beer for sales, use, or distribution in the state of Utah; it also requires those filing returns to keep records of activity relating to beer imports for three years. Subsection 63-46a-3(2) indicates when rulemaking is required. Section 63-46a-4 sets forth rulemaking procedures agencies must comply with. Section 63-46b-1 defines the scope and applicability of the Administrative Procedures Act. Section 63-46b-3 requires all adjudicative proceedings to be commenced by a notice of agency action, or a request for agency action. The law also provides procedures for filing and serving agency action notices. Section 63-46b-4 gives rulemaking power to agencies to designate adjudicative proceedings as formal and informal. Section 63-46b-5 requires any agency, which enacts a rule designating one or more category of adjudicative proceedings as informal adjudicative proceedings, to prescribe by rule proceedings for the informal adjudicative proceedings. Sections 63-46b-6 through 63-46b-11 outline procedures for agency formal and informal adjudicative proceedings. Section 63-46b-7 establishes procedures for discovery in formal adjudicative proceedings if an agency has not enacted rules on discovery. Section 63-

46b-8 establishes procedures to be followed when conducting a formal adjudicative proceeding, including the use of evidence. Section 63-46b-10 establishes procedures an agency must follow when conducting a formal adjudicative proceeding; including the signing and issuance of orders. Section 63-46b-13 allows an individual to file a request for reconsideration within 20 days of a final agency action. Section 63-46b-21 allows any person to file a request that the agency issue a declaratory order; and it outlines agency action when issuing a declaratory order. Section 76-8-502 allows a person to be found guilty of a second-degree felony for making a false or inconsistent material statement under oath.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R861-1A-1 defines terms necessary for the implementation of administrative procedures in the Tax Commission. Section R861-1A-2 clarifies the process by which the Tax Commission makes rules, including notice, hearing, and publication of rules. Section R861-1A-3 allows persons or parties affected by a Commission action the right to a division conference and a prehearing conference for the purpose clarifying and narrowing the issues and encouraging settlement. Section R861-1A-9 clarifies duties and responsibilities of the Commission when acting as the Utah State Board of Equalization. Section R861-1A-10 provides instructions concerning: 1) rights of parties; 2) effect of partial invalidation of rules; 3) enactment of inconsistent legislation; and 4) presumption of familiarity. Section R861-1A-11 clarifies the process of appealing a factor order. Section R861-1A-12 outlines the policies and procedures of the Commission regarding disclosure of and access to documents, work papers, decisions, and other information prepared by the Commission. Section R861-1A-13 outlines the manner by which disabled persons may request reasonable accommodations to services, programs, activities, or a job or work environment at the Tax Commission. Section R861-1A-15 requires all taxpayers to provide the Tax Commission with their social security number or federal identification number, as required by the Tax Commission. Section R861-1A-16 outlines the management plan of the Utah State Tax Commission. Section R861-1A-18 indicates how remittances received by the Tax Commission shall be allocated to tax, penalty, and interest. Section R861-1A-20 provides guidelines on the timeliness of requests for a hearing to correct a property tax assessment, a petition for redetermination, and those seeking judicial review. Section R861-1A-21 requires a quorum of the Commission to participate in any order on an adjudicative matter; and it states that the party charged with the burden of proof shall prevail only if the majority of commissioners rule in that party's favor. Section R861-1A-22 clarifies the time a petition for adjudicative action may be filed and the contents of the petition; does not allow the Commission to reject a petition

because of nonconformance, but allows the Commission to require an amended or substitute petition be filed. Section R861-1A-23 requires all matters to be designated as formal proceedings and set for a prehearing conference, initial hearing, or scheduling conference; and it allows matters to be diverted to mediation. Section R861-1A-24 provides guidelines for a formal adjudicative proceeding, including the initial hearing. Section R861-1A-26 outlines procedures to be followed in a formal adjudicative proceeding. Section R861-1A-27 establishes discovery procedures in a formal proceeding. Section R861-1A-28 authorizes formal proceedings to be conducted the same as in judicial proceedings in the state court; and it allows every party the right to introduce evidence, and provides guidelines on testimonies. Section R861-1A-29 clarifies that the presiding officer shall submit all written decisions and orders to the Commission for agency review before issuing the order; and it authorizes any party to file a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence. Section R861-1A-30 prohibits any party from having an ex parte communication with a commissioner or administrative law judge; and it provides guidelines if relevant ex parte communications are received by a commissioner or administrative law judge. Section R861-1A-31 provides for situations when a petition for a declaratory order may be filed; and it authorizes the commission to refuse to render the order under certain circumstances. Section R861-1A-32 authorizes the use of mediation to obtain a settlement agreement. Section R861-1A-33 defines "settlement agreement"; and it outlines procedures to be followed for submitting and approving settlement agreements. Section R861-1A-34 defines advisory opinions; provides procedures for requesting an advisory opinion; and it indicates the weight afforded an advisory opinion, as well as actions that may be taken if the opinion leads to the denial of a claim, audit assessment, or other agency action. Section R861-1A-35 defines "database management system", "electronic data interchange", "hard copy", "machine-sensible record", "storage-only imaging system", and "taxpayer"; and it provides guidelines for storage of records in various media. Section R861-1A-36 defines "tefile"; clarifies what constitutes a signature for taxpayers who submit a telefile return, vehicle registration over the internet, or a tax return through an authorized web site. Section R861-1A-37 defines "assessed value of the property", "disclosure", and "published decision"; and it indicates property tax information that may be disclosed—in general, during an action or proceeding, or in a published decision. Section R861-1A-38 indicates the actions the Commission may take to expedite exhaustion of administrative remedies for purposes of determining the persons who may be included in a class action. Therefore, this rule should be continued.

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

TAX COMMISSION
ADMINISTRATION
210 N 1950 W
SALT LAKE CITY UT 84134-0002, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

AUTHORIZED BY: D'Arcy Dixon, Commissioner

EFFECTIVE: 03/20/2007

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Tax Commission, Auditing **R865-3C** Corporation Income Tax

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 29714
FILED: 03/21/2007, 09:25

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 59-7-204 indicates how a corporation shall determine the portion of Utah taxable income derived from or attributable to sources within this state.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R865-3C-1 indicates how a corporation subject to the corporation income tax shall determine the net income attributable to Utah. Therefore, this rule should be continued.

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

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

AUTHORIZED BY: D'Arcy Dixon, Commissioner

EFFECTIVE: 03/21/2007

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Tax Commission, Auditing **R865-9I** Income Tax

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 29712
FILED: 03/20/2007, 13:39

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: Sections 63-38f-401 through 63-38f-416 create the Enterprise Zone Act, which provides state assistance to businesses operating in rural parts of the state. It also provides state tax credits for certain businesses operating within the enterprise zone. Section 63-38f-413 provides a list of state tax credits against individual income taxes or corporate franchise and income taxes applicable to an enterprise zone. Section 31A-32a-106 authorizes the Tax Commission to adopt rules necessary to implement the medical care savings account tax deduction. Section 53B-8a-112 authorizes the Tax Commission to adopt rules necessary to implement the educational saving plan tax deduction. Sections 59-2-1104 through 59-2-1109 exempt from property taxation certain property owned by disabled veterans or their unmarried surviving spouse and minor orphans, blind persons or their unmarried surviving spouse, or minor orphans; and allow the county to remit or abate taxes for indigent persons. Sections 59-2-1201 through 59-2-1220 provide general property tax relief for certain persons who own or rent their places of residence through a series of tax credits, refunds, and appropriations from the general fund. Section 59-6-102 requires that each producer of minerals in Utah deduct an amount equal to 5% of the amount that would be paid to the person entitled to the payment. Any person filing an income tax return is entitled to a credit against this tax if the amount withheld is greater than the tax due on the return. Section 59-10-103 defines individual income tax terms. Section 59-10-114 provides for additions to and subtractions from the federal taxable income of an individual in order to determine state taxable income. Section 59-10-115 allows for equitable adjustments to state income tax as necessary to prevent the inclusion or deduction of an item twice due to items involved in the taxpayer's federal return. Section 59-10-116 levies an income tax on nonresidents with income from Utah. This tax shall be based on federal adjusted gross income from Utah sources. Section 59-10-117 lists items included in the federal adjusted gross income (FAGI) from Utah sources. Section 59-10-118 states that any taxpayer having business income which is taxable within and without this state shall allocate and apportion his net income to the state. The statute then provides guidelines for allocation. Section 59-10-119 requires that a husband and wife shall file joint or separate returns with Utah based on how they filed federal returns and provides an exception if one spouse is a Utah resident and the other is a nonresident. Section 59-10-120 requires individuals who change status from resident to nonresident or nonresident to

resident during the taxable year to file one return for their resident status and one for their nonresident status, and provides guidance on determining taxable income in this case.

Section 59-10-121 states that if two returns must be filed because of a change of status from resident to nonresident, or vice versa, the personal exemptions and standard deductions shall be prorated between the returns based on the Tax Commission rule. Section 59-10-122 establishes that the state taxable year for an individual will coincide with his federal taxable year. Section 59-10-124 states that the Tax Commission shall have the authority to create rules to prevent over or under taxation when an individual switches accounting methods from one taxable year to the next. Section 59-10-207 gives instructions to determine the share of a nonresident estate or trust and beneficiary in state taxable income. Section 59-10-303 states that the adjusted gross income of a nonresident partner of a partnership shall be based on income derived from or connected with sources in this state and the partner's share of income gain, loss, and deduction. Section 59-10-401 defines terms relating to withholding tax. Section 59-10-402 requires each employer to withhold from wages an amount to be determined by a Tax Commission rule; provides an exemption from withholding; and provides that amounts withheld shall be a credit to the tax of the individual from whom they were withheld. Section 59-10-403 provides a withholding exemption for an employee who presents to his employer a certificate stating that the employee incurred no tax liability for the preceding year and does not expect to incur tax liability in the current year. The statute gives rulemaking power to the Tax Commission to implement this section. Section 59-10-405.5 requires a person who withholds income taxes to obtain a withholding tax license from the Commission.

It also indicates when a license applicant must post a bond with the Commission and how the bond amount shall be calculated. Section 59-10-406 sets forth requirements for employers on due dates and filing requirements for withholding; gives the Tax Commission rulemaking authority to prescribe manner by which an employer shall notify employees of amounts withheld on their behalf; and provides that employers hold withheld amounts in trust for the Tax Commission. Section 59-10-407 requires employers to make monthly payments of withholding tax to the Tax Commission if their withholding tax liability averages an amount designated in rule by the Tax Commission. Section 59-10-408 allows the Tax Commission to make agreements with the United States government to make provisions necessary to provide for deduction and withholding of tax from wages of federal employees in Utah; and gives the Tax Commission rulemaking authority to administer withholding. Section 59-10-501 requires all persons liable for tax to keep records, render statements, make returns, and comply with the rules that the Tax Commission may from time to time prescribe. Section 59-10-503 provides that a husband and wife may file a joint return with some exceptions. Section 59-10-504 requires that any fiduciary or receiver required to file a federal return must file a state return as well. Section 59-10-507 requires that any partnership receiving income in the state of Utah shall make a return for the taxable year. Section 59-10-512 requires that any return, statement, or other document submitted to the Tax Commission must be signed in accordance with forms or rules prescribed by the Tax Commission. Section 59-10-516

provides instructions for gaining an extension of time for filing returns. The law states that certain prepayments must be made by original due date or penalties will be assessed on the filing extension. Section 59-10-517 deems the U.S. postmark date as the delivery date; and allows the Tax Commission to provide by rule for postmarks by entities other than the U.S. post office. Section 59-10-522 allows the Tax Commission to extend the time for paying tax due on a return under the Tax Commission rules, and for paying tax deficiencies. Section 59-10-536 provides a statute of limitations on the assessment and collection of tax by the Tax Commission. Section 59-10-1003 prevents overtaxation by providing a credit against income tax otherwise due to the state of Utah for the amount of tax imposed on the taxpayer in another state. Section 59-10-1006 provides a Utah resident an income tax credit for an amount equal to 20% of qualified rehabilitation expenditures when restoring a historic building. Section 59-13-202 entitles any person who purchases motor fuel for the use of stationary or self-propelled machinery used for nonhighway farm operation to an income tax refund, and provides methods for obtaining the credit.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R865-9I-2 defines "resident", "resident taxpayer", "nonresident", "nonresident taxpayer", "part year resident", and "domicile" and clarifies domicile for purposes of a person in active military service. Section R865-9I-3 provides instructions on how to file for an income tax credit for income taxes paid to another state. Section R865-9I-4 clarifies when it is appropriate to take an equitable adjustment. Section R865-9I-6 provides instructions for a husband and wife, if either one is a nonresident, to file separate returns even though they filed a joint federal return; and provides a method to determine each spouse's FAGI when they qualify to file separate state returns. Section R865-9I-7 provides definitions of "part year resident" and "FAGI", and provides instructions for determining the FAGI of a part-year resident and a business with income from within and without Utah. Section R864-9I-8 provides that two returns are not required when an individual changes status as resident or nonresident, except in unusual circumstances. Section R865-9I-9 provides instructions for calculating a taxpayer's taxable state income when required to convert income from a period of less than a year to an annual basis for federal tax purposes.

Section R865-9I-10 states that a taxpayer must include a statement setting forth all differences when an alternate method of accounting is used to compute income from the method used the previous year. Section R865-9I-11 states that in the determination of shares of beneficiaries of an estate or trust, consideration will be given to the net amount of modifications described in the Utah Code; and other methods must be cleared with the Tax Commission. Section R865-9I-12 states that statutory modifications that relate to items of income or deduction of an estate or trust may be used as the fiduciary adjustment; and other methods must be approved by

the Tax Commission. Section R865-91-13 requires nonresident partners to keep records to verify their gross income derived from Utah sources. It also provides guidance on filing the partnership return as a composite return. Section R865-91-14 requires withholding only on Utah income, and allows credit for withholding paid to another state. It provides instructions to employers regarding withholding of wages, including income subject to withholding, the number of exemptions that may be claimed, and use of tables published by the commission. Section R865-91-15 states that an employer need not withhold wages from an employee with a federal withholding certificate. Section R865-91-16 prescribes the forms necessary to file withholding returns and sets forth penalties incurred by employers not filing properly. The section also prescribes information that must be on W-2 form.

Section R865-91-17 establishes conditions for employers to file withholding returns on a monthly basis and directions for filing monthly. Section R865-91-18 clarifies taxpayer responsibility to keep and store adequate records for income tax purposes. Section R865-91-19 clarifies whether a joint return or a separate return should be filed in a year in which one spouse dies. Section R865-91-20 clarifies when a fiduciary is required to file a return and the information required to be on the fiduciary return, and establishes liability for payment of the estate's or trust's taxes. Section R865-91-21 provides income tax filing instructions for individuals involved in a partnership. It also clarifies the method of filing if one member of partnership is a nonresident and the partnership has income from inside and outside the state. Section R865-91-22 clarifies that any return filed with the Tax Commission is not valid unless the sender signs the return. It also clarifies the conditions a taxpayer must satisfy to file returns on reproduced or facsimile copies of state tax returns.

Section R865-91-23 provides information for prepaying income tax. The section indicates when interest shall be charged on a return filed pursuant to an extension, and the amount of extension Utah residents in military service stationed outside the U.S. have to file their return. Section R865-91-24 clarifies that provisions relating to prima facie evidence of delivery and the postmark date on registered mail from the United States postal system apply to certified mail as well. Section R865-91-30 provides for a taxpayer to waive the statute of limitations in order to determine whether an activity is engaged in for profit. Section R865-91-33 states that all Utah residents keeping forms for reporting rents, royalties, interest, and remuneration from Utah sources not subject to federal withholding must make them available to authorized representatives of the Tax Commission or submit them to the Tax Commission upon request. Section R865-91-34 states that, for property tax relief purposes, individuals living in an owned trailer home situated on rented land must complete two computations: 1) for property taxes on the mobile home; and 2) for the rental of the land, excluding charges for utilities, services, or furnishings supplied by the landlord. The section also states what portions of renter received assistance may be included in rent paid. Section R865-91-37 provides definitions for the enterprise zone tax credit and indicates when an investment is a qualifying investment for purposes of the credit. This section provides guidance on how an employer shall determine its base number of employees for purposes of the credit, maintenance of records, and revocation of county's

designation as an enterprise zone. Section R865-91-39 requires a Disabled Exemption Verification for each deduction for handicapped children and adults. Section R865-91-41 provides instructions for applying for and receiving historic preservation tax credit, and any subsequent carryforwards of that credit. Section R865-91-42 provides that the order of deducting credits against individual income tax is: 1) nonrefundable credits; 2) nonrefundable credits with a carryforward; and 3) refundable credits. Section R865-91-44 defines "professional athletic team", "member of a professional athletic team", and "duty days" for purposes of apportioning income subject to Utah tax for all professional athletes performing in the state of Utah. Section R865-91-46 requires medical savings account administrators to file information on each account they administer, along with a reconciliation, with the Tax Commission on an annual basis. This section outlines the content of the form, along with record keeping requirements and the necessity of each account holder to attached the form to their state return. Section R865-91-47 states that combat pay is excluded from withholding requirements and provides an extension of time to pay income taxes for individuals receiving combat pay. Section R865-91-48 provides guidance on what expenses will qualify for the adoption deduction, who may use the deduction, when the deduction may be taken, and circumstances when that deduction must be added back. Section R865-91-49 requires the trustee of the Utah Educational Savings Plan Trust to provide trust participants and the Tax Commission with certain information on the status of the participant's account with the trust. Section R865-91-50 indicates when the addition to federal taxable income for interest on certain bonds shall apply. Section R865-91-51 provides conditions under which a withholding tax licensee will be considered to have changed the licensee's business address or ceased to do business. Therefore, this rule should be continued.

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

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

AUTHORIZED BY: D'Arcy Dixon, Commissioner

EFFECTIVE: 03/20/2007

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Tax Commission, Auditing
R865-12L
Local Sales and Use Tax

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

DAR FILE No.: 29705
FILED: 03/16/2007, 11:14

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 59-1-403 requires that all individuals with access to information from tax returns maintain strict confidentiality with regard to that information. It also provides instances when information may be disclosed or shared. Section 59-12-109 requires the confidentiality of taxpayer documents in accordance with Section 59-1-403. Section 59-12-202 states purpose and intent of local sales and use tax. Section 59-12-204 allows local governments to impose a local sales and use tax and sets forth the provisions that must be included in the ordinance imposing the local sales and use tax. Section 59-12-205 provides that the distribution of local sales and use taxes to local governments shall be based on location where the transaction is consummated and population. Section 59-12-207 requires that a vendor report all sales and use taxes collected to the Tax Commission on forms accurately depicting where the sale was consummated. The Tax Commission is to create rules to determine where sales take place for businesses with no permanent place of business or more than one place of business in Utah. Section 59-12-302 provides that the transient room tax shall be levied at the same time and collected in the same manner as the local sales and use tax. Section 59-12-354 indicates that the governing body of a municipality may choose to collect the municipality transient room tax or have the Tax Commission collect that tax for it. Section 59-12-401 establishes a resort community tax of up to 1% for towns and cities whose transient room capacity equals or exceeds 66% of the permanent census population and provides certain exemptions to that tax. Section 59-12-602 defines "convention facility", "cultural facility", "recreation facility", and "restaurant" -- all terms necessary for the administration of the tourism, recreation, cultural, and convention facilities tax. Section 59-12-603 provides for the creation of a tourism, recreation, cultural, and convention facilities tax: 1) not to exceed 3% on all short-term rentals of motor vehicles not exceeding 30 days; 2) not exceeding 1/2% of the rent for every occupancy of a suite room or rooms; and 3) not to exceed 1% of all sales of prepared foods and beverages sold by restaurants.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R865-12L-1 provides that all rules made with respect to the state sales and use tax shall apply to the local sales and use tax. Section R865-12L-3 permits use of sales tax rate charts to determine sales tax due on a taxable sale. Section R865-12L-4 requires

that the local sales and use tax be reported to the Tax Commission on a combined return with the state sales and use tax. Section R865-12L-5 provides that retail sales shall be deemed to occur at the place of business of the retailer, regardless of where tangible personal property is delivered. This section also establishes that if a seller has more than one location, and at least two locations are involved in the sale, the sale shall be deemed to occur at the location from which the property is shipped or delivered. This section will be amended to refer to the correct statutory authority. Section R865-12L-6 outlines the responsibilities of a vendor to collect local use tax when that vendor is located outside Utah and ships to places within Utah. It also states that if the vendor is not required to collect local use taxes it is the consumers' responsibility to pay the use tax. Section R865-12L-9 defines "combined sales tax rate"; states that sellers with no fixed or determinable place of business in Utah shall report sales on the basis of the county in which the sales are made and shall report purchases on the basis of the county in which the tangible personal property is initially delivered; indicates the transactions that shall be reported in the various sales tax schedules; and indicates how sales reported on various sales tax schedules shall be allocated to counties and municipalities. Section R865-12L-11 outlines the sales tax liability of a person who purchases a motor vehicle from someone other than a licensed dealer. Section R865-12L-12 sets forth responsibilities of in-state and out-of-state lessors to collect local sales tax and states the location at which that sales tax shall accrue. Section R865-12L-13 provides that charges for repairs, renovations, or other taxable services to tangible personal property shall accrue to the business location out of which the repairman works. Section R865-12L-14 provides procedures for local governing bodies' review of local sales and use taxes remitted by businesses located within that political subdivision. This section also provides procedures for corrections for firms omitted from the list of a particular political subdivision or firms listed but not doing business in the jurisdiction of the political subdivision. Section R865-12L-16 clarifies the notice required to the Tax Commission when a county or municipality imposing the transient room tax changes the responsibility to collect the tax from the Tax Commission to the county or municipality or vice versa. Section R865-12L-17 defines "primary business", and "retail establishment", and provides guidance necessary to administer the restaurant tax. Section R865-12L-18 clarifies the Tax Commission's exclusive authority to administer and enforce the local sales and use tax, and lists the circumstances under which local governments: 1) shall have access to the Tax Commission records; and 2) may intervene in or appeal from a proposed final Tax Commission action. Therefore, this rule should be continued.

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

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

AUTHORIZED BY: D'Arcy Dixon, Commissioner

EFFECTIVE: 03/16/2007

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

AUTHORIZED BY: D'Arcy Dixon, Commissioner

EFFECTIVE: 03/19/2007

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Tax Commission, Auditing
R865-14W
Mineral Producers' Withholding Tax

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

DAR FILE No.: 29707
FILED: 03/19/2007, 11:31

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 59-6-101 defines terms used in this chapter. Section 59-6-102 requires a producer to withhold an amount equal to 5% of payments made for the production of minerals in this state and provides for a credit for a person from whom payment has been withheld. Section 59-6-103 requires producers to file a return with the commission on forms prescribed by the commission. Section 59-6-104 provides that the provisions of the income tax withholding, Title 59, Chapter 10, Part 4, shall apply to this chapter.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R865-14W-1 defines "working interest owner", "first purchaser", "person", and "producer" with regard to the state mineral producer's withholding tax. It clarifies withholding requirements, who is responsible to pay tax, and how claims for credits against the withholding tax should be made. It also provides guidelines for filing different return forms, and who is responsible for unpaid tax. Therefore, this rule should be continued.

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

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

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Tax Commission, Auditing
R865-15O
Oil and Gas Tax

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

DAR FILE No.: 29708
FILED: 03/19/2007, 13:48

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 59-5-101 defines terms related to the oil and gas severance tax. Section 59-5-102 imposes a severance tax on oil and gas; provides an annual exemption from the tax for the first \$50,000 in gross value of each well; provides an exemption from the tax for stripper wells; subjects each owner to the tax in proportion to his ownership interest in the well; and requires producers who take oil or gas in kind pursuant to an agreement on behalf of the owner to report and pay the tax. Section 59-5-104 requires producers engaged in the production of oil or gas from wells within the state to file an annual return with the Tax Commission prior to June 1.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R865-15O-1 defines terms necessary to the administration of the severance tax on oil and gas; indicates how an owner or operator shall calculate his share of the annual exemption from the tax; and indicates who must file returns when working interest owners engage in a business arrangement in which someone other than themselves is conducting the operations of an oil or gas lease. Section R865-15O-2 indicates how the stripper well exemption applies to a well that produces oil and gas; states that the consecutive 12-month requirement need not fall within one calendar year; and indicates how average daily production shall be calculated. Therefore, this rule should be continued.

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

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

AUTHORIZED BY: D'Arcy Dixon, Commissioner

EFFECTIVE: 03/19/2007

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Tax Commission, Auditing **R865-20T** Tobacco Tax

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29709
FILED: 03/19/2007, 16:18

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 59-14-202 requires that cigarette licenses be issued only to a person owning or operating the place where cigarette vending machine sales are made. It requires a separate license for each location sales are made. It also provides instructions pertaining to license issuance. Section 59-14-204 imposes a cigarette tax and provides the rates of the tax imposed. It states that the tax shall be imposed upon the first purchase of cigarettes in the state. Section 59-14-205 provides that the cigarette tax shall be paid by affixing stamps on cigarettes, unless otherwise provided in rule by the Tax Commission. It requires that all cigarettes sold in the state of Utah be stamped within 72 hours of their receipt in the state and prior to sale in Utah. It also allows the Tax Commission to draft rules allowing cigarettes to remain unstamped in the hands of the wholesaler or distributor under certain conditions. The law also gives the Tax Commission authority to create rules aiding in the enforcement and collection of cigarette tax. Section 59-14-206 sets forth procedures for design, sales, deposit of revenues, redemption, and discounts for cigarette stamps. Section 59-14-212 requires all manufacturers, distributors, or retailers that affix a stamp to imported cigarettes to provide certain information to the Tax Commission regarding those imported cigarettes; indicates that the required information shall be reported on a quarterly basis; and provides a penalty for failure to comply. Section 59-14-301 requires all manufacturers, distributors, and retailers of tobacco products

to register with the Tax Commission. It also requires persons subject to this section to post a bond as a prerequisite to registering. Section 59-14-302 imposes a tax on the sale, use, or storage of tobacco products in Utah. The tax is imposed on the first purchase of the product in Utah. Section 59-14-303 requires that tobacco tax be remitted to the Tax Commission on a quarterly basis; requires manufacturers, and wholesalers to provide detailed invoices showing where the products were distributed if they were not sold to consumers; and provides penalties for not paying tax. Section 59-14-401 allows a refund of cigarette tax on cigarettes and tobacco products sold outside of the state of Utah to a regular dealer in these articles. Section 59-14-404 gives the Tax Commission authority to enter on the premises of a taxpayer to examine books and papers pertaining to the cigarette or tobacco products tax, or to secure any information directly or indirectly concerned with the enforcement of Title 59, Chapter 14.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R865-20T-1 clarifies that the cigarette tax and tobacco products tax are imposed upon the first purchase, use, storage, or consumption in the state, and clarifies that no tax is due from a nonresident or tourist who purchases cigarettes outside the state for use, storage, or consumption inside the state. Section R865-20T-2 provides that tax due on imported cigarettes may be paid by affixing stamps or by filing a monthly return. Section R865-20T-3 states that each vending machine selling tobacco is to be licensed as a separate place of business. The license will be posted in a conspicuous place on the machine. The section also provides guidelines for application for license and to change the place of business.

Section R865-20T-5 provides that sellers of tobacco products are not required to post bond if a previous seller has paid the tax on the products. Section R865-20T-6 provides that cigarette stamps shall be sold to licensed and bonded dealers; provides that stamps may be delivered on consignment; and indicates who may request the stamps. Section R865-20T-7 clarifies that sales of cigarettes and tobacco products to vendors outside the state are not subject to this tax. This section also provides guidelines on records that must be maintained to evidence this exemption. Section R865-20T-8 requires manufacturers, jobbers, distributors, wholesalers, retailers, users, or consumers of tobacco products or cigarettes to keep records necessary to determine the amount of tax due on the sale and consumption of these products for a period of three years. Section R865-20T-9 allows inventories of cigarettes held by manufacturers to be delivered to wholesalers or jobbers without being stamped. The records of those deliveries must be kept with information provided in the rule, and made available to the Tax Commission. Section R865-20T-10 provides guidelines to renew a cigarette and tobacco products license or to reinstate a revoked or suspended license. Section R865-20T-11 allows manufacturers, distributors, wholesalers, and retailers that are

required to provide, on a quarterly basis, a copy of the importer's federal import permit and customs form, to exclude those items from enclosure with their quarterly report so long as that information is kept in their records, and provided to the Tax Commission upon request. Therefore, this rule should be continued.

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

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

AUTHORIZED BY: D'Arcy Dixon, Commissioner

EFFECTIVE: 03/19/2007

AUTHORIZE OR REQUIRE THE RULE: Section 59-23-4 requires the Commission to annually determine the value of unprocessed brine shrimp eggs in accordance with a valuation methodology established by the Commission in rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R865-25X-1 defines terms, establishes a valuation methodology for unprocessed brine shrimp eggs, and indicates the information necessary for the Commission to value the unprocessed brine shrimp eggs. Therefore, this rule should be continued.

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

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

AUTHORIZED BY: D'Arcy Dixon, Commissioner

EFFECTIVE: 03/21/2007

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Tax Commission, Auditing
R865-25X
Brine Shrimp Royalty

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

DAR FILE No.: 29715
FILED: 03/21/2007, 11:23

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

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

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End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. Statute permits an agency to make a rule effective "on any date specified by the agency that is no fewer than seven calendar days after the close of the public comment period . . . , nor more than 120 days after the publication date." Subsection 63-46a-4(9).

Abbreviations

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

Alcoholic Beverage Control

Administration

No. 29439 (AMD): R81-1-6. Violation Schedule.
Published: February 15, 2007
Effective: March 30, 2007

No. 29440 (AMD): R81-1-26. Criminal History Background Checks.
Published: February 15, 2007
Effective: March 30, 2007

Commerce

Consumer Protection

No. 29412 (AMD): R152-20-2. Definitions.
Published: February 1, 2007
Effective: March 20, 2007

No. 29427 (AMD): R152-22. Charitable Solicitations Act.
Published: February 15, 2007
Effective: April 2, 2007

Occupational and Professional Licensing

No. 29432 (AMD): R156-11a. Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rules.
Published: February 15, 2007
Effective: March 27, 2007

No. 29078 (AMD): R156-56-704. Statewide Amendments to the IBC.
Published: October 15, 2006
Effective: March 27, 2007

No. 29078 (CPR): R156-56-704. Statewide Amendments to the IBC.
Published: February 15, 2007
Effective: March 27, 2007

Education

Administration

No. 29478 (AMD): R277-473-9. Standardized Testing Rules and Professional Development Requirement.
Published: February 15, 2007
Effective: March 27, 2007

No. 29477 (AMD): R277-505. Administrative/Supervisory Certificates and Programs.
Published: February 15, 2007
Effective: March 27, 2007

No. 29479 (AMD): R277-517. Athletic Coaching Certification.
Published: February 15, 2007
Effective: March 27, 2007

Environmental Quality

Environmental Response and Remediation

No. 29460 (NEW): R311-600. Hazardous Substances Mitigation Act: Enforceable Written Assurances.
Published: February 15, 2007
Effective: March 26, 2007

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 29469 (AMD): R414-308. Application, Eligibility Determinations and Improper Medical Assistance.
Published: February 15, 2007
Effective: April 1, 2007

Health Systems Improvement, Emergency Medical Services

No. 29392 (AMD): R426-16. Emergency Medical Services Maximum Ambulance Transportation Rates and Charges.
Published: February 1, 2007
Effective: April 1, 2007

Human Services

Substance Abuse and Mental Health, State Hospital

No. 29434 (REP): R525-1. Medical Records.
Published: February 15, 2007
Effective: April 2, 2007

NOTICES OF RULE EFFECTIVE DATES

Natural Resources

Forestry, Fire and State Lands

No. 29468 (AMD): R652-20-1600. Posting
Dates/Simultaneous Filing.
Published: February 15, 2007
Effective: March 26, 2007

No. 29461 (NEW): R652-140. Utah Forest Practices
Act.
Published: February 15, 2007
Effective: March 26, 2007

Public Service Commission

Administration

No. 29438 (AMD): R746-409. Pipeline Safety.
Published: February 15, 2007
Effective: March 27, 2007

Transportation

Program Development

No. 29455 (NEW): R926-4. Establishing and Defining
a Functional Classification of Highways in the State of
Utah.
Published: February 15, 2007
Effective: March 26, 2007

Workforce Services

Employment Development

No. 29491 (AMD): R986-700. Child Care Assistance.
Published: February 15, 2007
Effective: April 1, 2007

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, 2007, including notices of effective date received through April 2, 2007, the effective dates of which are no later than April 15, 2007. 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>Administration</u>					
R13-2	Access to Records	29771	5YR	04/02/2007	2007-8/119
<u>Facilities Construction and Management</u>					
R23-25	Administrative Rules Adjudicative Proceedings	29474	AMD	04/11/2007	2007-4/2
<u>Finance</u>					
R25-14	Payment of Attorneys Fees in Death Penalty Cases	29424	5YR	01/17/2007	2007-4/54
<u>Fleet Operations</u>					
R27-5	Fleet Tracking	29457	5YR	01/29/2007	2007-4/54
R27-6	Fuel Dispensing Program	29515	5YR	02/14/2007	2007-5/19
R27-8	State Vehicle Maintenance Program	29534	5YR	02/21/2007	2007-6/36
<u>Fleet Operations, Surplus Property</u>					
R28-1	State Surplus Property Disposal	29550	5YR	02/26/2007	2007-6/36

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>Records Committee</u>					
R35-2-2	Declining Requests for Hearings	29081	AMD	01/05/2007	2006-20/2
Agriculture and Food					
<u>Administration</u>					
R51-2	Administration Procedures for Informal Proceedings Before the Utah Department of Agriculture and Food	29405	5YR	01/11/2007	2007-3/56
<u>Animal Industry</u>					
R58-1	Admission and Inspection of Livestock, Poultry, and Other Animals	29506	5YR	02/08/2007	2007-5/19
R58-6	Poultry	29504	5YR	02/08/2007	2007-5/20
R58-18	Elk Farming	29505	5YR	02/08/2007	2007-5/20
R58-22	Equine Infectious Anemia (EIA)	29503	5YR	02/08/2007	2007-5/21
R58-23	Equine Viral Arteritis (EVA)	29342	NEW	02/28/2007	2007-1/5
<u>Plant Industry</u>					
R68-19	Compliance Procedures	29453	5YR	01/29/2007	2007-4/55
R68-20	Utah Organic Standards	29347	AMD	02/28/2007	2007-1/6
<u>Regulatory Services</u>					
R70-201	Compliance Procedures	29492	5YR	02/02/2007	2007-5/21
R70-320	Minimum Standards for Milk for Manufacturing Purposes, its Production and Processing	29507	5YR	02/08/2007	2007-5/22
R70-350	Ice Cream and Frozen Dairy Foods Standards	29499	5YR	02/05/2007	2007-5/22
R70-360	Procedure for Obtaining a License to Test Milk for Payment	29500	5YR	02/05/2007	2007-5/23
R70-530	Food Protection	29632	5YR	03/12/2007	2007-7/149
Alcoholic Beverage Control					
<u>Administration</u>					
R81-1-6	Violation Schedule	29439	AMD	03/30/2007	2007-4/4
R81-1-26	Criminal History Background Checks	29440	AMD	03/30/2007	2007-4/6
Commerce					
<u>Administration</u>					
R151-2	Government Records Access and Management Act Rules	29524	5YR	02/15/2007	2007-5/23
<u>Consumer Protection</u>					
R152-11	Utah Consumer Sales Practices Act	29470	5YR	02/01/2007	2007-4/55
R152-20-2	Definitions	29412	AMD	03/20/2007	2007-3/4
R152-22	Charitable Solicitations Act	29427	AMD	04/02/2007	2007-4/8
R152-23	Utah Health Spa Services	29238	AMD	01/23/2007	2006-24/3
R152-26	Telephone Fraud Prevention Act	29379	AMD	02/23/2007	2007-2/3
R152-26	Telephone Fraud Prevention Act	29594	5YR	03/05/2007	2007-7/149
<u>Occupational and Professional Licensing</u>					
R156-1	General Rules of the Division of Occupational and Professional Licensing	29586	5YR	03/01/2007	2007-6/37
R156-1-102	Definitions	29555	NSC	03/09/2007	Not Printed
R156-9-302a	Qualifications for Licensure - Examination Requirements	29391	AMD	03/13/2007	2007-3/6
R156-11a	Cosmetologist/Barber, Esthetician, Electrologist and Nail Technician Licensing Act Rules	29013	AMD	01/11/2007	2006-19/5

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R156-11a	Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rules	29013	CPR	01/11/2007	2006-23/87
R156-11a	Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rules	29432	AMD	03/27/2007	2007-4/9
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rules	29355	AMD	02/22/2007	2007-2/3
R156-24a	Physical Therapist Practice Act Rules	29459	5YR	01/30/2007	2007-4/56
R156-26a	Certified Public Accountant Licensing Act Rules	29473	5YR	02/01/2007	2007-4/56
R156-28	Veterinary Practice Act Rules	29472	5YR	02/01/2007	2007-4/57
R156-37	Utah Controlled Substance Act Rules	29696	5YR	03/15/2007	2007-7/150
R156-40a	Athletic Trainer Licensing Act Rule	29353	NEW	02/22/2007	2007-2/9
R156-41	Speech-Language Pathology and Audiology Licensing Act Rules	29471	5YR	02/01/2007	2007-4/57
R156-42a	Occupational Therapy Practice Act Rules	29356	AMD	02/22/2007	2007-2/11
R156-54	Radiology Technologist and Radiology Practical Technician Licensing Act Rules	29396	5YR	01/09/2007	2007-3/56
R156-56	Utah Uniform Building Standard Act Rules	29120	AMD	01/01/2007	2006-21/5
R156-56	Utah Uniform Building Standard Act Rules	29357	NSC	01/01/2007	Not Printed
R156-56	Utah Uniform Building Standard Act Rules	29122	AMD	01/01/2007	2006-21/33
R156-56	Utah Uniform Building Standard Act Rules	29393	AMD	03/13/2007	2007-3/7
R156-56	Utah Uniform Building Standard Act Rules	29745	5YR	03/29/2007	2007-8/119
R156-56-704	Statewide Amendments to the IBC	29078	AMD	03/27/2007	2006-20/10
R156-56-704	Statewide Amendments to the IBC	29078	CPR	03/27/2007	2007-4/48
R156-56-711	Statewide Amendments to the IRC	29075	AMD	01/01/2007	2006-20/13
R156-57	Respiratory Care Practices Act Rules	29354	AMD	02/22/2007	2007-2/12
R156-64	Deception Detection Examiners Licensing Act Rules	29803	5YR	04/09/2007	Not Printed
R156-70a	Physician Assistant Practice Act Rules	29564	5YR	02/27/2007	2007-6/38
R156-71	Naturopathic Physician Practice Act Rules	29394	5YR	01/08/2007	2007-3/57
R156-72	Acupuncture Licensing Act Rules	29395	5YR	01/09/2007	2007-3/57
R156-75	Genetic Counselor Licensing Act Rules	29397	5YR	01/09/2007	2007-3/58
R156-78A	Prelitigation Panel Review Rules	29804	5YR	04/09/2007	Not Printed
Real Estate					
R162-9	Continuing Education	29224	AMD	01/17/2007	2006-23/3
R162-102	Application Procedures	29523	5YR	02/15/2007	2007-5/24
R162-104	Experience Requirement	29522	5YR	02/15/2007	2007-5/24
R162-106	Professional Conduct	29521	5YR	02/15/2007	2007-5/25
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ABBREVIATIONS

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

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