

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
Filed April 3, 2007, 12:00 a.m. through April 16, 2007, 11:59 p.m.

Number 2007-9  
May 1, 2007

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

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

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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Printed in the United States of America

**Library of Congress Cataloging-in-Publication Data**

Utah state bulletin.

Semimonthly.

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

I. Utah. Office of Administrative Rules.

KFU440.A73S7

348.792'025--DDC

85-643197

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# SPECIAL NOTICES

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## Commerce Administration

### **Public Hearing on Proposed Modified Fee Schedule for Services Provided and Costs Incurred by the Department of Commerce During Fiscal Year 2008**

The Department of Commerce will hold a hearing on Thursday, May 10, 2007, at 9:00 a.m. in the Heber M. Wells Building, 160 East 300 South, Room 402, Salt Lake City, Utah.

The purpose of the hearing is to obtain public comment on a proposed modified schedule for fees which could be assessed for services provided by the Department and costs which would be thus incurred for new programs created by the Legislature during the 2007 General Session. The proposed modified fee schedule supplements the Department's fee schedule approved by the Legislature during its 2007 General Session.

Section 63-38-3.2(5)(a) of the Budgetary Procedures Act provides an agency may establish and assess regulatory fees for new programs created by the Legislature if the new program's effective date is before the Legislature's next annual general session. That statute governs the process for the interim assessment of such fees prior to subsequent legislative approval.

Background: Various divisions of the Department assess fees for licensure, registration, or certification of individuals and businesses to engage in certain occupations and professions. Copies of the proposed modified fee schedule will be distributed at the May 10, 2007, hearing.

*For further information, please contact Peter Anjewierden at (801) 530-6293.*

**End of the Special Notices Section**

## NOTICES OF PROPOSED RULES

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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 April 3, 2007, 12:00 a.m., and April 16, 2007, 11:59 p.m. are included in this, the May 1, 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 31, 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 29, 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.

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**The Proposed Rules Begin on the Following Page.**



**Administrative Services, Facilities  
Construction and Management  
R23-19  
Facility Use Rule**

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)  
DAR FILE NO.: 29812  
FILED: 04/13/2007, 11:25

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The existing rule, Rule R23-19, included Capitol facilities which are now under the Capitol Preservation Board's jurisdiction and did not emphasize other complexes. The reenacted rule seeks to provide clear, impartial policies for facility use that can apply to all buildings in use by state agencies and to provide appropriate exceptions where needed. The existing rule text of Rule R23-19 will be repealed and a rewritten Rule R23-19 will be reenacted. The reenacted rule will have the appropriate and pertinent methods, forms, and requirements to regulate the use of state facilities and grounds. It provide rules regarding political signs except for Freedom of Speech Activities or as constitutionally protected, and authorizes written policies to be created pursuant to the rule.

**SUMMARY OF THE RULE OR CHANGE:** The repealed rule text contained: the specific provisions for Use of Capitol Rotunda, State Office Building Auditorium, White Community Memorial Chapel, and Capitol Complex Grounds that are deleted; the detailed definitions and requirements for the types of activities allowed; the general rules, applying to all facilities, and were very specific; and that the definitions of Facility Use Application and Facility Use Permit listed each item of the form. The reenacted rule text contains: authorization by Section 63A-5-103 and does not apply to state facilities and grounds under the jurisdiction of the legislative and judicial branches of the State of Utah government, the Utah State Board of Regents, or the Capitol Preservation Board, except for points authorized by law or the Utah Constitution; that state-leased facilities must comply to the extent consistent with the lease agreement, while still conforming to the requirements of the constitutions of the United States and the State of Utah; that the Managing Agency is given authority to create written policy requiring a Facility Use Permit or other policies pursuant to this rule; that prohibition of use of alcoholic beverages is waived for state facilities and grounds under the jurisdiction of the Department of Alcohol Beverage Control or golf courses under the Division of Parks and Recreation; that specific portions of the rule that may not be waived are stated; that political signs are prohibited, except for hand-carried signs during permitted events and political signs are allowed under Freedom of Speech Activities or as constitutionally protected. A new rule for freedom of speech activities is created and will be submitted as Rule R23-20, Freedom of Speech Activities; that the Managing Agency can charge or waive fees; that Community Service Activities rules are condensed; that solicitation is changed to "Commercial Solicitation" without specific organizations noted and

exceptions clearly stated; that authority is given to the Managing Agency to develop policies; that rules that can apply to any other state facilities and grounds owned or occupied by a department or agency of the State are listed under Section R23-19-4; that there is no insurance or activity fee for Freedom of Speech activities; and the following definitions: "event" or "events", "Private Activity", "Managing Agency", "State Facilities and Grounds", "Political Sign", "Commercial Solicitation", "Facility Use Permit", and "Facility Use Application" are condensed and do not list each item on the form. (DAR NOTE: The proposed new rule of R23-20 is under DAR No. 29811 in this issue, May 1, 2007, of the Bulletin.)

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 63A-5-103 and 63A-5-204

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** The reenacted rule neither increases or decreases the revenue that may come from use of state facilities. There is a potential for some revenue to be made from use of facilities. However, this is not guaranteed since fees can be waived. There is no anticipated cost to the state budget.
- ❖ **LOCAL GOVERNMENTS:** Any costs will be borne by those applying for permits, and since governmental activities are exempt from fees, there is no anticipated cost to local government. There may be a savings resulting from using facilities at no cost.
- ❖ **OTHER PERSONS:** There are anticipated costs to persons applying for Facility Use Permits, where fees are applicable. There may be anticipated savings depending on the type of function being requested. For some functions the fee is waived, resulting in a savings to the individual.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are anticipated costs to individuals, partnerships, corporations, associations, or private organizations applying for Facility Use Permits, where fees are applicable. However, most governmental entities and/or public organizations may experience a savings depending on the type of function being requested, since fees are waived for certain functions.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The anticipated costs to individuals, partnerships, corporations, associations, or private organizations applying for Facility Use Permits will be moderate. Fees can also be waived by the Managing Agency. Therefore, the fiscal impact on businesses will be minimal. Kim Hood, Executive Director

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

ADMINISTRATIVE SERVICES  
FACILITIES CONSTRUCTION AND MANAGEMENT  
Room 4110 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:

Alan Bachman or Priscilla Anderson at the above address, by phone at 801-538-3105 or 801-538-9595, by FAX at 801-538-3313 or 801-538-3378, or by Internet E-mail at abachman@utah.gov or phanderson@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 05/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2007

AUTHORIZED BY: Keith Stepan, Director

## R23. Administrative Services, Facilities Construction and Management.

### R23-19. Facility Use Rules.

#### ~~R23-19-1. Purpose.~~

~~—The purpose of this rule is to provide for use of state facilities for continued operation of state government.~~

#### ~~R23-19-2. Authority.~~

~~—This Rule is authorized under Section 63A-5-204, which authorizes the Executive Director of the Department of Administrative Services to adopt rules governing state grounds surrounding facilities managed by DFCM.~~

#### ~~R23-19-3. Definitions.~~

~~—(1) The following definitions are provided to assist in understanding language incorporated into the following Facility Use Rules:~~

~~—(a) "Agency" — department, division or agency within the structure of the State of Utah.~~

~~—(b) "DFCM" — Division of Facilities Construction and Management, a division within the Department of Administrative Services.~~

~~—(c) "Director" — the director of the Division of Facilities Construction and Management.~~

~~—(d) "Facility Use Application" — a form that needs to be completed by prospective user and approved by resident agency for activities held within state owned facilities and contains the following information: (i) prospective user's name, address, and telephone number; (ii) the name of the facility being requested; (iii) the type of activity; (iv) the dates and times of the function; (v) insurance company, name and policy number, unless applicant is seeking waiver under R23-19-2(24); (vi) any other special considerations being requested; and (vii) all applications shall be reviewed by DFCM Facilities Management group determining the applicable category for activity and fee assessment. This decision may be appealed using process described under R23-19-2(24).~~

~~—(e) "Facility Use Permit" — permit issued to users authorizing the use of state owned facilities for designated activities and contains the following information: (i) the name of the organization and individual authorized to use designated facility; (ii) the facility designated for use; (iii) purpose for use of the facility; (iv) the dates and times of the activity; (v) the fee assessed for the activity; (vi) the permit number; (vii) information required for compliance with Subsection 23-19-4(18); and (viii) the authorized resident agency representative signature authorizing the activity.~~

~~—(f) "Fees" — charges assessed for use of state owned facilities. The fees shall be assessed as follows: (i) "Freedom of Speech Activities" shall be assessed a fee using a base cost commensurate with actual cost to the state; (ii) "Commercial Activities" shall be assessed a fee comparable to fees charged for similar activities within the community; and (iii) "Community Service Activities" shall be assessed a fee the same as first amendment activities. "Base Cost" is the actual cost to the State for utilities, janitorial, security services and cost of rental for equipment used for activity. The "Fee Schedule", which is subject to change, shall be approved by the Director. A fee schedule shall be provided to applicant at time of application. The content of any first amendment activity shall not be a basis for calculating any portion of the fee.~~

~~—(g) "Governmental Activities" — any activity directly related to governmental business. This does not include extra-curricular activities.~~

~~—(h) "State" — state of Utah and any of its departments, divisions, agencies or commissions.~~

~~—(i) "Freedom of Speech Activities" — an activity characterized as the right of a person or group to exercise freedom of speech or other first amendment right that is provided on government property by applicable law.~~

~~—(j) "Community Service Activities" — an activity closely related to community service activities including public awards, public recognition and public benefits.~~

~~—(k) "State Sponsored Activities" — this shall include any activity directly sponsored by the state of Utah, its departments, agencies and commission and shall be exempt from fees and insurance costs.~~

~~—(l) "Commercial Activities" — any activity not meeting above criteria shall be characterized as commercial activity. Endorsements for commercial purposes of products or services is prohibited.~~

#### ~~R23-19-4. General Rules.~~

~~—(1) Those intending to use state facilities must obtain scheduling and authorization of activities in advance from the agency/department head or facilities manager. If no facility manager exists, approval must be obtained from resident agency or its representative. Users must comply with all rules and procedures established. The proposed activity shall not interfere with the operation of governmental business or public access.~~

~~—(2) All rules apply to state owned or leased facilities.~~

~~—(3) Users may use the facilities for activities scheduled at reasonable times. Examples of activities at the Capitol Complex might include dances in the Rotunda, rallies on the front stairs of the Capitol and in designated areas on the grounds, weddings and receptions in the White Community Memorial Chapel, and meetings in the State Office Building Auditorium. Endorsements for commercial purposes of products or services is prohibited.~~

~~—(4) The state of Utah, any of its departments or divisions, or any employee shall not be responsible for any property damage or loss, any personal property damage or loss, or any personal injury sustained during, or as a result of, any activity.~~

~~—(5) Every group applying for a facility use permit will be required to complete an application form, provide the required fee, and provide a certificate of insurance showing proof of liability insurance in the amount of \$1,000,000 per occurrence unless exempt or waived under these rules.~~

~~—(6) Users may not carry or post placards or signs attached to wood or metal posts of any type, within any building. In addition, users may not post signs on the grounds or the exterior of any building. Any signs or placards placed in state facilities shall be hung with rope, cord~~

or string. No adhesive materials or wire will be allowed. Balloons may be used but need to be tied with string to banisters or railings; they may not be handed out to participants of the activity or let loose.

—(7) No temporary structure of any kind shall be constructed on state-owned properties without the express written consent of DFCM or the appropriate resident agency.

—(8) The use or storage of alcoholic beverages or any unauthorized or controlled drugs in any state-owned facility or on state grounds is prohibited.

—(9) All "No Smoking" ordinances, rules and policies shall be strictly observed in all state-owned facilities.

—(10) To protect the beauty of state facilities, all decorations used for a scheduled activity shall be of a temporary nature and shall be appropriate for the dignity and beauty of the structure and shall be approved by the resident agency.

—(a) No adhesive material may be used that would leave a glue, paste, tape, oil, paint or other residue on the building.

—(b) Nothing may be used as a decoration or in the process of decorating that would cause damage to the structure.

—(c) No markings, paint or sprays may be applied to any area of the building.

—(d) Decorating during the normal work hours shall be done in a manner that limits any disturbance to normal building activities. Any decorating during other than normal hours must be coordinated with facility manager or resident agency.

—(e) Decorating is to be done in a safe manner, using proper tools and equipment.

—(f) Users may not decorate on the outside of any building.

—(g) Signs, posters, decorations, displays, or markings must comply with all current pornography ordinances of the jurisdiction in which the facility is located.

—(11) Food services in conjunction with a permitted use in state-owned facilities is subject to the approval of resident agency.

—(12) Parking is available at all state-owned facilities. Users shall observe, and Protective Services will enforce, all restricted and marked parking areas.

—(a) Vehicles owned or under control of participants shall not be parked in reserved parking areas, which shall include the parking plaza on Capitol Hill, and shall not be allowed to remain overnight.

—(13) The user shall be responsible for any personal injury, vandalism, damage, or loss or other destruction of property or premises incurred during the activity.

—(14) Any animals must be specifically approved in advance and must provide assurance of safety to the animal, participants and the facility.

—(15) No open flame, flammable fluids, or explosives shall be brought to or used on the premises.

—(16) User shall not sublet any part of the premises or transfer or assign the premises or change the purpose of the permitted activity without the written consent of the state.

—(17) No money may be collected at state facilities; all tickets, if required, must be pre-sold.

—(18) Users and participants must abide by all applicable firearm laws, rules, and regulations.

—(a) The state shall reserve the right to require users to notify the appropriate security agent of the anticipated presence of any person with a weapon or firearm.

—(19) These general rules are incorporated into any permit issued and into all rules governing use of any state facility. These rules do not apply to facilities of public or higher education.

—(20) No equipment shall be used nor activity engaged in which is contrary to applicable rules, regulations or state, local or governmental ordinances or codes.

—(21) No equipment shall be used nor activity shall be engaged in which will place an excessive stress load on the building structure or building systems.

—(22) Exceptions and Waivers.

—(a) State activities are exempt from fees and insurance requirements to the extent that the activity is covered by state Risk Management.

—(b) Governmental activities are exempt from fee and insurance requirements to the extent that the activity is covered by state Risk Management.

—(c) Freedom of speech activities—a waiver of the fee or insurance costs, or a part thereof, shall be provided for free speech activities if the applicant or sponsoring group can demonstrate clearly an inability to pay the fee or insurance. The state reserves the right to pay the insurance costs. The applicant may be requested to provide a financial statement and other relevant documents as proof of inability to make payment. A request for such a waiver must be made at time of application and shall be promptly scheduled for an informal review before the Executive Director of the Department of Administrative Services (DAS) or the director's designee. The Executive Director or designee shall make a written determination of approval or disapproval of the waiver request and state the grounds for the decision within five days of the submission of the request for a waiver. The applicant shall have the right to appeal and to have a hearing before the DAS Executive Director or designee within five days of notification. The DAS Executive Director or designee shall conduct a hearing and make his decision in writing as to appeal of the initial disapproval of a waiver within five days of the submission of the appeal. The person hearing the appeal shall not be the same person who denied the original request. The notice of appeal to be filed by the applicant should be in writing. Notice of the right to appeal and the appropriate procedure shall be given to applicant if denial is made. The applicant shall be allowed to submit additional or pertinent information during the appeal to support the request for a waiver. There will be no waiver of fee or costs associated with usage of equipment such as tables, chairs, podium, microphone or any outside accessory items to the activity. Applicant may provide and use any accessory item for an activity. An insurance waiver may be issued to an applicant that can show proof of being uninsurable—proof that coverage was denied by at least three insurance providers licensed and doing business in the state of Utah, including the current state provider of insurance.

—(d) Community service activities—a waiver of the fee and/or insurance costs, or a part thereof, may be provided for community service activities if the applicant or sponsoring group can demonstrate clearly an inability to pay the fee and/or insurance. The state reserves the right to pay the insurance costs. The applicant may be requested to provide a financial statement and other relevant documents as proof of inability to make payment. A request for such a waiver must be made at time of application and shall be promptly scheduled for an informal review before the Executive Director of the Department of Administrative Services (DAS) or his designee. The Executive Director or designee shall make a written determination of approval or disapproval of the waiver request and state the grounds for the decision within five days of the submission of the request for a waiver. The applicant shall have the right to appeal and to have a hearing before the DAS Executive Director or designee within five days of notification. The DAS Executive Director or designee shall conduct a hearing and make his decision in writing as to appeal of the initial disapproval of a

waiver within five days of the submission of the appeal. The person hearing the appeal shall not be the same person who denied the original request. The notice of appeal to be filed by the applicant should be in writing. Notice of the right to appeal and the appropriate procedure shall be given to applicant if denial is made. The applicant shall be allowed to submit additional or pertinent information during the appeal to support the request for a waiver. There will be no waiver of fee of costs associated with usage of equipment such as tables, chairs, podium, microphone or any accessory items to the activity. Applicant may provide and use own accessory items for an activity. An insurance waiver may be issued to an applicant that can show proof of being uninsurable—proof that coverage was denied by at least three insurance providers licensed and doing business in the state of Utah including the current state provider of insurance.

—(e) Commercial activities—no exceptions or waivers shall apply except the insurance may be waived if covered by State Risk Management. Adult chaperons will be required for commercial activities; the number, appropriate for the nature of the event and the number and ages of the users, will be determined by DFCM. Chaperons will help direct roaming guests, check rest rooms periodically, aid in maintaining reasonable behavior and enforcement of the rules.

#### **R23-19-5. Use of Capitol Rotunda.**

—In addition to the provisions of Section 2, the following rules for the Capitol Rotunda shall be observed:

—(1) Public use of the Capitol shall not disrupt or interfere with any legislative session or state agency business. Safe, unhindered passageways must be provided at all times.

—(2) A Facility Use request for permit for events in the Capitol Rotunda must be received in writing at least 24 hours in advance of the time the event is proposed to commence. Priority will be given to state departments, agencies, and public school districts for use of the Capitol Rotunda. The Rotunda is available six days a week, Monday through Saturday. The facility has an established Fire Marshal occupancy limit of 2,700 people which shall not be exceeded.

—(3) The sound level of any individual or group, whether amplified or not, must not disrupt or interfere with any legislative session or state agency business.

—(4) The second floor of the Rotunda, marble stairways, and third floor balcony are available for use but access to the fourth floor, first floor, and basement areas is not allowed.

—(5) For use of committee rooms, House of Representatives Chamber, Senate Chambers, or the Supreme Court, requests must be made directly to those agencies for scheduling.

—(6) No fire exits, which shall include staircases and doorways, shall be blocked during any activity. Tables shall not be placed in front of, or so as to block, doorways in any manner.

—(7) All vehicles coming to Capitol Hill in conjunction with the activity shall park on the south side of the Capitol Building, on the circular drive south of the Capitol known as Cherry Lane, or in the small visitor parking area or the main parking lot directly east of the Capitol.

—(8) All deliveries and movement of equipment shall come to the south entrance under the main stairs, after 5:00 p.m., and shall use the south elevator between the first and second floors, unless prior arrangement has been made with DFCM.

—(9) Elevators used to move equipment shall be protected from damage.

—(10) All equipment brought into the building shall have rubber wheels, four inch or larger, or be hand carried so to cause no damage to facilities.

—(11) Users shall remove all equipment, decorations and supplies by 12:00 midnight on the night of the activity unless specific arrangements are made in advance with DFCM or Protective Services.

—(12) In addition, DFCM may require two uniformed security personnel for every 400 participants and will be included as a part of the base cost paid by user.

—(13) Protective Services will determine number and arrange for uniformed security personnel.

—(14) Users shall control entrances to allow only those persons attending the activity to enter building.

—(15) If any person or group is reasonably suspected of being in non-compliance with any of these rules, an appropriate State law enforcement office may provide a warning to such person or group to cease and desist from such non-complying act. If a State law enforcement office reasonably observes that such non-complying act is continuing after such warning, then a State law enforcement office may have the person or group removed from the Capitol premises as well as take any other appropriate action allowed by law.

#### **R23-19-6. Use of State Office Building Auditorium.**

—In addition to the provisions of Section 2, the following rules for the State Office Building Auditorium shall be observed:

—(1) The Auditorium is available to all state departments and agencies on a first come, first served basis for meetings, public hearings, bid openings, lectures, training sessions, examinations and other similar activities. Agencies shall reserve the auditorium with DFCM.

—(2) When not being used by a state agency, the Auditorium may be used by private or public organizations upon receipt of a permit from DFCM.

—(a) The facility is available five days a week, Monday through Friday.

—(3) After hours access shall be through the first floor south doors.

—(a) The remainder of the building will be closed to the public.

—(4) The Auditorium has an established Fire Marshal occupancy limit of 225 people which shall not be exceeded.

—(5) All vehicles coming to Capitol Hill in conjunction with the activity should park in the lot on the west side of the State Office Building.

—(6) Sufficient supervision shall be present to insure that people use only the Auditorium or rest room areas on the 1st floor of the State Office Building.

#### **R23-19-7. Use of White Community Memorial Chapel.**

—In addition to the provisions of Section 2, the following rules for the White Community Memorial Chapel shall be observed:

—(1) The Chapel area has pew seating for 129 people, balcony seating for 35 people and elevated front "stand" seating for 16 people, but the Fire Marshal has established an occupancy limit of 164 people which shall not be exceeded.

—(a) Users may use the speaker's pulpit and upright piano.

—(2) The lower level of the building has a large open meeting room with seating for 76 people conference style and the Fire Marshal has established an occupancy limit of 76 people which shall not be exceeded.

—(a) Users may use the full rest room facilities and full kitchen facilities for small to medium sized groups. Kitchen use includes electric stove, oven, refrigerator, double sinks, and work counter.

—(3) The following is available for use:

—(a) small kitchen facilities;

—(b) hot water;

—(c) air conditioning;

—(d) fire extinguisher in basement; and

—(e) the elevator serving lower level and main floor of chapel.

—(4) The Chapel will be available from 7 a.m. until 12 midnight, seven days a week, 365 days a year unless otherwise specified.

—(5) All vehicles coming to Capitol Hill in conjunction with the activity should park in the lot between the Chapel and Council Hall.

—(6) Notice of intent to display, prepare, or consume food shall be communicated to DFCM on the Facility Use Application Form prior to issuance of the permit. Users shall treat the equipment with the utmost care and leave the equipment in its original condition after use.

—(7) Sufficient supervision shall be present to insure that damage does not occur to the premises.

### **R23-19-8. Use of Capitol Complex Grounds.**

— In addition to the provisions of Section 2, the following rules for the Capitol Complex Grounds shall be observed:

—(1) Camping is prohibited on the State Capitol Complex grounds.

—(2) When a permit is issued, the location of the activity will be specified. Participants will be required to contain the activity in the area specified in the permit.

—(3) No activity on the grounds shall interfere with normal government and business activities.

—(4) No motor vehicle races, neither speed, time, endurance, exhibition nor driving competition shall be held on the Capitol Complex grounds.

—(5) No grass, plants, shrubs, trees, paving or concrete shall be disturbed, broken, removed or covered without the written permission of DFCM.

—(6) Sufficient supervision shall be present to insure that people use only designated area and to insure that no damage occurs.

### **R23-19-9. Rules for Other State Owned Facilities.**

—(1) All General Rules shall be observed.

—(2) Permission to use other state facilities must be obtained from the facility manager or resident agency for the facility.

### **R23-19-10. Solicitation Policy.**

—(1) Definitions

—(a) "Solicitation" is any activity which may be considered or reasonably interpreted as being for the advertisement, promotion, sale or transfer of products, or services, or for the participation in a commercial venture of any kind.

—(i) The distribution or posting of handbills, leaflets, circulars, advertising or other printed materials for the purpose cited in paragraph 1 is construed as solicitation.

—(b) "State property" is all premises maintained by, or for the use of, a state agency, department or division.

—(2) Policy

—(a) Solicitation, whether on site or through establishment of an on-going delivery service, is prohibited on state property except as listed in "C" below.

—(b) No solicitation materials may be posted except on designated bulletin boards.

—(c) With the exception of bulletin boards designated for posting solicitation materials, no state materials, supplies, services or equipment may be used for solicitation purposes other than activities authorized by an agency of the state for state connected business or state sponsored charitable purposes.

—(d) Any and all violations observed shall be reported immediately to Protective Services.

—(3) Permissible Solicitation Activities

—(a) Charitable campaigns (including blood drives, state United Way campaign, food banks, sub for Santa and other charitable activities).

—(b) Organized employee participation in sports activities representing their state agency or a charitable organization including departmental or charity ball teams.

—(c) Announcements required by law or requested by a state agency in furtherance of official duties (including job announcements, EEO and OSHA notices).

—(d) Activities conducted at the direction of the head of a state agency.

—(e) Employees' sale of small craft items during breaks and lunch in employee lounges and break areas.

—(f) State employees may post handbills, leaflets, circulars, advertising or other printed materials on specifically designated bulletin boards regarding the offering or sale of personal items such as free kittens or bikes for sale, or personal announcements such as wedding announcements or ride share requests. This does not apply to conducting a business (such as Tupperware or Amway sales).

—(g) Employee recognition events conducted by a state agency such as National Secretaries Week Luncheons which are approved by the supervisor of the employees affected.

### **R23-19-11. Waiver.**

— Notwithstanding any provision of this Facility Use Rules R23-19, a waiver of any provision thereof, may be made in writing by the DFCM Facilities Management group, if it determines in writing that the strict holding of the provision would be unreasonable under the circumstances and that the provision is not needed to protect the facility, grounds or the public. The applicant has the burden to establish that the waiver should be granted. The request for waiver shall be made in writing as part of the Facility Use Application and must provide the necessary information and documentation to support such waiver. The decision of the Facilities Management group may be appealed similarly to the appeal of the denial of a Facility Use Application.]

### **R23-19-1. Purpose.**

— The purpose of this rule is to regulate the use of state facilities and grounds as defined below, providing rules regarding political signs, as well as authorizing written policies to be created pursuant to this rule.

### **R23-19-2. Authority and Applicability.**

(1) This Rule is authorized under Sections 63A-5-103 and 63A-5-204 which authorizes the making of rules regarding the use and management of state facilities and grounds owned or occupied by the State for the use of its department and agencies.

(2) This Rule shall apply to all state facilities and grounds except as follows:

(a) To the extent not authorized by law or the Utah Constitution, this Rule does not apply to state facilities and grounds under the jurisdiction of the legislative and judicial branches of the State of Utah government.

(b) This Rule does not apply to state facilities and grounds under the jurisdiction of the Utah State Board of Regents.

(c) This Rule does not apply to state facilities and grounds under the jurisdiction of the Capitol Preservation Board.

(d) This Rule does apply to state facilities and grounds under a lease to the extent consistent with the lease agreement, as the lease agreement shall control the use of the property under the lease. Notwithstanding this, the requirements of the constitutions of the United States and the State of Utah shall supersede the provisions of any such lease agreement and in particular, in the exercise of freedom of speech or assembly rights under such constitutions in any such leased facilities and grounds, the provisions of this rule regarding time, place and manner shall apply.

### **R23-19-3. Definitions.**

(1) "Agency" means a State of Utah department, division or agency.

(2) "DFCM" means the Division of Facilities Construction and Management, a division within the Department of Administrative Services.

(3) "Event" or "events" are commercial, community service, private and state sponsored activities involving one or more persons. A free speech activity is not an event for purposes of this rule. The term "activity" or "activities" may be substituted in this rule for the term "event" or "events."

(4) "Facility Use Application" means a form, if required by the policies of the Managing Agency, which may require information identifying the event, time, location and purpose for a facility use permit that needs to be completed by a prospective user and submitted to the Managing Agency of the State Office Building.

(5) "Facility Use Permit" ("Permit") means a written permit issued by the Managing Agency authorizing the use of an area of state facilities and grounds for an event in accordance with this rule.

(6) "Freedom of Speech Activity" is as defined in Rule R23-20.

(7) "State Sponsored Activity" means any event sponsored by the state that is related to state business. This does not include extra-curricular activities.

(8) "Private Activity" means an event sponsored by private individuals, business or organizations that is not a commercial or community service activity.

(9) "Managing Agency" means the agency responsible for the management, operations and use of the facility. If DFCM is responsible for the maintenance of state facilities and grounds, the agreement between DFCM and the occupying agency shall identify the "Managing Agency."

(10) "State Facilities and Grounds" means State of Utah facilities and/or grounds where the principal use of the facility and/or grounds is related to state office or program functions or is under the control of any State of Utah agency; all of which is subject to the exclusions of Rule R23-19-2(2).

(11) "Community Service Activities" means events sponsored by governmental, quasi-governmental and charitable organizations, city and county government departments and agencies, public schools, and charitable organizations held to support or recognize the public or charitable functions of such sponsoring group.

(12) "Commercial Activities" means events that sponsored or conducted for the promotion of commercial products or services, and include advertising, private parties, private company or organization meetings, and any other non-public organization event.

Commercial activities do not include private, community service, state sponsored, or free speech activities.

(13) "Political Sign" means a sign regarding a candidate for political office or regarding a political issue to be considered in an election.

(14) "Commercial Solicitation" is as defined in rule R23-19-6.

(15) "State" means the State of Utah and any of its agencies, departments, divisions, officers, and legislators, members of the judiciary, persons serving on state boards or commissions, and employees of the above entities and persons.

### **R23-19-4. State Office Building Use Requirements.**

(1) The Managing Agency may adopt policies, which require a Facility Use Permit to be submitted. Such policies may provide for a waiver of the policy adopted under this Rule R23-19-4(1) under criteria specified in the policies. The policies may specify the form of the application, including:

(a) The time, place, purpose and scope of the proposed activity;

(b) Whether the applicant requests a waiver of any requirement of this rule or provision of the Facility Use Permit;

(c) A certificate of liability insurance in the amount of \$1,000,000 per occurrence, except for Freedom of Speech Activities where no insurance is required; and

(d) Any required fee subject to the following:

(i) Fees may be assessed for the use of state facilities and grounds through the written policies of the Managing Agency. When any activity is subject to a fee, the Managing Agency should consider at a minimum the actual cost to the State including utilities, janitorial, security and rental cost for equipment. The following applies to specific activities:

(ii) "Freedom of Speech Activities." There are no fees for freedom of speech activities, but costs for requested use of state equipment or supplies may be assessed through the uniformly applied policies of the Managing Agency.

(ii) "Commercial Activities" or "Private Activities" shall be assessed a fee, which is reasonably comparable to fees charged for similar activities within the County of the state facilities and grounds. There shall be no fee waiver allowed for commercial or private activities.

(iii) "Community Service Activities" shall be assessed a fee of 50 percent of the fee for a commercial activity and such fee may only be waived if requested in a facility use application and granted by the approving authority. There shall be no waiver of the fee related to the costs of requested use of state equipment and supplies, which is assessed through the uniformly applied policies of the Management Agency.

(iv) "State Sponsored Activities." There are no fees for state sponsored activities, except that state agencies will be required to pay the costs and fees identified in the uniform policies of the Management Agency when the activity is not required for the conducting of state business, such as after-hour social events, employee recognition events, and holiday parties.

(2) The proposed activity shall not interfere with the operation of governmental business or public access. No persons shall unlawfully intimidate or interfere with persons seeking to enter or exit any facility, or use of any state facilities and grounds.

(3) The consumption, distribution or open storage of alcoholic beverages in state facilities and grounds is prohibited. This provision shall not apply to state facilities and grounds under the

jurisdiction of the Department of Alcohol Beverage Control or golf courses under the Division of Parks and Recreation.

(4) Open flames, flammable fluids, candles, burning incense or explosives are prohibited.

(5) No displays, including but not limited to signs, shall be affixed to state facilities and grounds.

(6) User shall not sublet any part of the premises or transfer or assign the premises or change the purpose of the permitted activity without the written consent of the state.

(7) Alteration and damage to a state facilities and grounds including grass, shrubs, trees, paving or concrete, is prohibited.

(8) All costs to repair any damage or replace any destruction, regardless of the amount or cost of restoration or refurbishing shall be at the expense of the persons(s) responsible for such damage or destruction.

(9) Service animals are permitted, but the presence of other animals is allowed only with advance written permission of the Managing Agency. Owners/caretakers are responsible for the safety to the animal, persons, grounds and facilities.

(10) Littering is prohibited.

(11) Decorations.

(a) All cords must be taped down with 3M #471 tape or equivalent as determined by the Managing Agency.

(b) There shall be no posting or affixing of placards, banners, or signs attached to any part of any building or on the grounds. All signs or placards shall be hand held. Signs or posters may not be on sticks or poles.

(c) No adhesive material, wire, nails, or fasteners of any kind may be used on the buildings or grounds.

(d) Nothing may be used as a decoration, or be used in the process of decorating, that marks or damages structure(s).

(e) All decorations and supporting structures shall be temporary.

(f) Any writing or use of ink, paint or sprays applied to any area of any building is prohibited.

(g) Users may not decorate the outside of any facility or any portion of the grounds.

(h) Signs, posters, decorations, displays, or other media shall be in compliance with the state law regarding Pornographic and Harmful Materials and Performances, Section 76-10-1201 et seq.

(12) Set up/Clean up.

(a) All deliveries and loading/unloading of materials shall be limited to routes and elevators as specified by the Managing Agency.

(b) All decorations, displays and exhibits shall be taken down by the designated end time of the event in a manner that is least disruptive to state business.

(c) Users shall leave all state facilities and grounds in its original condition and appearance.

(13) Parking. There must be compliance with the written parking requirements adopted by the Managing Agency.

(14) Compliance with Laws.

(a) Users shall conform to all applicable and constitutional laws and requirements, including health, safety, fire, building and other codes and similar requirements. Occupancy limits as posted in or applicable to any public area will dictate, unless otherwise limited for public safety, the number of persons who can assemble in the public areas. Under no circumstance will occupancy limits be exceeded. State security personnel shall use reasonable efforts to ensure compliance with occupancy, safety, and health requirements.

(b) Safety requirements as used in this rule include safety and security requirements made known to the Managing Agency by the Utah Department of Public Safety or the federal government for the safety and security of special events and/or persons.

(c) "No Smoking" statutes, rules and policies, including the Utah Indoor Clean Air Act, Section 26-38 et seq. shall be observed.

(d) All persons must obey all applicable firearm laws, rules, and regulations.

(15) Security and Supervision at Events.

(a) The Managing Agency may adopt written policies regarding security requirements for events, which must be followed.

(b) At least one representative of the applicant identified in the application and permit shall be present during the entire activity.

(16) Photography, Portraits and Video/Filming.

(a) Any photography, videotaping or filming, shall require advance notice to, and permission from the Managing Agency for scheduling.

(b) This Subsection (16) shall not apply to tourists and does not apply to the extent it is the exercise of a free speech activity.

(17) Commercial, Private and Community Service Activities. A Managing Agency may determine through its written policies to categorically not allow any commercial, private and/or community service activities. However, if commercial or private activities are allowed, then community service activities shall be allowed subject to all the requirements of this rule and a facility use permit.

(18) Liability.

(a) The state, Managing Agency and their designees, employees and agents shall not be deemed in default of any issued permit, or liable for any damages if the performance of any or all of their obligations under the permit are delayed or become impossible because of any act of God, terrorism, war, riot or civil disobedience, epidemic, strike, lock-out or labor dispute, fire, or any other cause beyond their reasonable control.

(b) Except as required by law, the state shall not be responsible for any property damage or loss, nor any personal injury sustained during, or as a result of, any use, activity or event.

(c) Users/applicants shall be responsible for any personal injury, vandalism, damage, loss, or other destruction of property caused by the user or an attendee at the applicant's event.

(19) Indemnification. Individuals and organizations using any state facilities and grounds do so at their own risk and shall indemnify and hold harmless the state from and against any and all suits, damages, claims or other liabilities due to personal injury or death, and from damage to or loss of property arising out of or resulting from the conduct of such use or activities on the Capitol Hill Complex.

(20) Enforcement of Rules. If any person or group is found to be in violation of any of the applicable laws and rules, a law enforcement officer or state security officer may issue a warning to cease and desist from any non-complying acts. If the law enforcement or security officer observes a non-compliant act after a warning, the officer may take disciplinary action including citations, fines, cancellations of event or activity, or removal from the state facility and grounds.

#### **R23-19-5. Facility Use Permit - Denial - Appeal - Cancellation - Revocation - Transfer.**

(1) Within ten (10) working days of receipt of a completed application, the Managing Agency shall issue a Facility Use Permit or notice of denial of the application.

(2) The Managing Agency may deny an application if:

(a) The application does not comply with the applicable rules;

(b) The event would conflict or interfere with a state sponsored activity, a time or place reserved for freedom of speech activities, the operation of state business, or a legislative session; and/or

(c) The event poses a safety or security risk to persons or property.

(3) The Managing Agency may place conditions on the approval that alleviates such concerns.

(a) If the applicant disagrees with a denial of the application or conditions placed on the approval, the applicant may request a reconsideration of the Managing Agency's determination by delivering the written request for reconsideration and reasons for the disagreement to the Managing Agency within five (5) working days of the issuance of the notice of denial or approval with conditions.

(b) Within ten (10) days after the Managing Agency receives the written request for reconsideration, the Managing Agency may modify or affirm the determination.

(c) If the matter is still unresolved after the issuance of the Managing Agency's reconsideration determination, the applicant may appeal the matter, in writing, within ten (10) calendar days to the Executive Director of the Department of Administrative Services who will determine the process of the appeal.

(5) Facility Use Permits are non-transferable. The purpose, time, place and other conditions of the Facility Use Permit may not be changed without the advance written consent of the Managing Agency.

(6) An event may be re-scheduled if the Managing Agency determines that an event will conflict with a governmental function, free speech activity or state sponsored activity.

(a) The Managing Agency may revoke any issued permit if this rule R23-19, any applicable law, or any provision of the permit is being violated. The permit may also be revoked if the safety or health of any person is threatened.

(b) The permittee may cancel the permit and receive a refund of fees, less any incurred costs to the state or managing agency, and any deposits if written notice of cancellation is received by the Managing Agency at least 48 hours prior to the scheduled event. Failure to timely cancel the event will result in the forfeiture of any deposit and fees.

#### **R23-19-6. Commercial Solicitation Policy.**

(1) In general, commercial solicitation is prohibited.

(2) Nothing in this rule shall be interpreted as to infringe upon anyone's constitutional right of freedom of speech and freedom of association.

(3) In addition to the definitions in R23-19-3 above, the following definitions shall also apply to this Rule R23-19-6:

(a) "Commercial Solicitation(s)" means any commercial activity conducted for the purpose of advertising, promoting, fund-raising, buying or selling any product or service, encouraging membership in any group, association or organization, or the marketing of commercial activities by distributing handbills, leaflets, circulars, advertising or dispersing printed materials for commercial purposes.

(b) "Commercial Solicitation" for the purpose of this rule does not include free speech activities as defined in rule R23-20, Utah Administrative Code.

(c) "Commercial Solicitation" for the purpose of this rule does not include filming or photographic activities, but such activities shall be subject to rule R23-19 et seq.

(d) "Commercial Solicitation" for the purpose of this rule does not include solicitation by the state or federal government; solicitation related to the business of the state, solicitation related to the procurement responsibilities of the state, solicitation allowed as a matter of right under applicable federal or state law; or solicitation made pursuant to a contract or lease with the state.

(4) Commercial Solicitation Allowed under a Facility Use Permit.

(a) Commercial solicitation, not prohibited by R23-19-6(5) below, may be allowed in conjunction with the issuance of a facility use permit under rule R23-19 and such commercial solicitation must comply with the facility use rules of R23-19-1 et seq.

(b) All materials allowed shall be displayed only on bulletin boards or in areas that have been approved in advance by the Managing Agency.

(c) The issuance of a facility use permit shall not be construed as state endorsement of the solicitor's product, service, charity or event.

(d) Soliciting activities are subject to all littering laws and regulations.

(5) Prohibited Commercial Solicitation. The following commercial solicitation activities are prohibited and no facility use permit shall be issued for such:

(a) Door-to-door commercial solicitation of items, services or donations.

(b) Commercial solicitation to persons in vehicles or by leaving any commercial solicitation materials on vehicles or parking lots.

(c) Any sale of food or beverage products that would be in any violation of any contract entered into by the State or the Managing Agency.

#### **R23-19-7. Waivers.**

(1) The Managing Agency may waive, in writing, the requirements of any provision of this Rule R23-19 upon being presented with compelling reasons that the waiver will substantially benefit the public of the state of Utah and that the facilities, grounds and persons will be appropriately protected. Conditions may be placed on any approved waiver to assure the appropriate protection of facilities, grounds and person. An appeal of a denial of a request for such waiver may be filed and processed similarly to the denial of a Facility Use Permit as described in R23-19-5.

(2) Costs and fees shall be waived for state sponsored activities. However, state agencies will be required to pay the costs and fees identified in the Schedule of Costs and Fees when the activity is not required for the conducting of state business, such as after-hour social events, employee recognition events, and holiday parties. Costs and fees will not be waived for commercial, private and commercial solicitation activities.

(3) Notwithstanding the waiver provisions of this rule, the following may not be waived by the Managing Agency: R23-19-4(2), (4), (7), (8), (9), (10), (14), (15), (17), (18), (19) and (20) as well as R23-19-6.

#### **R23-19-8. Political Signs.**

Political signs, except for hand-carried signs during permitted events under a Facility Use Permit, are prohibited on all State of Utah owned properties except as allowed under a Freedom of Speech Activity or as protected under the State of Utah or United States Constitutions.



Rule R23-19-8(1) shall not apply to Utah Department of Transportation right-of-ways, properties of the State and Institutional Trust Lands Administration or properties of Higher Education, any of which may have its own laws or rules applicable to political signs.

**KEY: public buildings, facilities use[\*]**

**Date of Enactment or Last Substantive Amendment:** ~~January 1, 1998~~ 2007

**Notice of Continuation:** June 14, 2002

**Authorizing, and Implemented or Interpreted Law:** 63A-5-103, 63A-5-204

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## Administrative Services, Facilities Construction and Management **R23-20** Free Speech Activities

### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 29811

FILED: 04/13/2007, 11:23

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The right to free speech and assembly is guaranteed by the constitutions of the State of Utah and the United States. However, to promote order in facilitating this right, guidelines must be in place to ensure that the business of the facility is not unduly interrupted, and that others' right to free speech, as well as their safety and security considerations are not violated. This rule sets down specific procedures to ensure this happens. It also seeks to protect the safety and security of the facility(s) and grounds involved and provides an appeal process to those whose requests are denied.

**SUMMARY OF THE RULE OR CHANGE:** The purpose of this rule is to facilitate constitutionally protected free speech activities and public assembly; to provide for lawful time, place, and manner rules regarding free speech activities necessary to protect the public health, safety, and welfare; to provide safety and security of all persons visiting or using state facilities and grounds; to minimize disruption to or interruption of the conduct of state business; to maintain unobstructed and efficient flow of pedestrian and vehicular traffic between and within state facilities and grounds and assure accessibility to public services; to provide all persons their guaranteed right of free speech and freedom of assembly without harm or interruption; to inform persons of their responsibilities regarding littering, damage to, and vandalism of state facilities and grounds; to inform that there is no fee for free speech activities other than the use/rental of state property items requested by the applicant; and to inform of expedited appeal procedures.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 63A-5-103 and 63A-5-204

#### ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This rule neither increases or decreases the revenue that may come from use of state facilities. If the function is actually a free speech activity, there will be no fee assessed for the right to hold the activity. However, after consideration, if the Managing Agency deems that it is a commercial or a private activity, a fee will be assessed. There is a potential for some revenue to be made from use of facilities on Capitol Hill, but it is unlikely from other areas. However, this is not guaranteed since fees can be waived. There is no anticipated cost to the state budget.

❖ **LOCAL GOVERNMENTS:** Any costs will be borne by those applying for permits, and only if the activity is not deemed a free speech activity. Since governmental activities are exempt from fees, there is no anticipated cost to local government. There may be a savings resulting from using facilities at no cost.

❖ **OTHER PERSONS:** There can be costs to persons applying for Facility Use Permits, but only if the event is not deemed a free speech activity. If it is deemed as such, there will be no cost except for use/rental of state property items.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** If the event is actually deemed a free speech event, there will be no cost to any affected person. If it is deemed a commercial or a private event, then an individual, partnership, corporation, association, or private organization may be assessed a fee. Also, there may be a cost to the entity if there is damage to the facility or area.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There will be no fee assessed for the right to hold a free speech activity. However, after consideration, if the Managing Agency deems the event to be a commercial or a private activity, a fee will be assessed. Fees can also be waived by the Managing Agency. Therefore, the fiscal impact this rule may have on businesses will be minimal, and only for events that are not free speech events. Kim Hood, Executive Director

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

ADMINISTRATIVE SERVICES  
FACILITIES CONSTRUCTION AND MANAGEMENT  
Room 4110 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:**

Priscilla Anderson or Alan Bachman at the above address, by phone at 801-538-9595 or 801-538-3105, by FAX at 801-538-3378 or 801-538-3313, or by Internet E-mail at phanderson@utah.gov or abachman@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 05/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2007

AUTHORIZED BY: Keith Stepan, Director

**R23. Administrative Services, Facilities Construction and Management.**

**R23-20. Free Speech Activities.**

**R23-20-1. Purpose.**

- (1) The purpose of this rule is to:
- (a) facilitate constitutionally protected free speech and assembly at state facilities and grounds.
- (b) preserve the right of every person to exercise free speech and freedom of assembly as protected by the constitutions of the state of Utah and the United States subject to lawful time, place and manner rules regarding free speech activities necessary to protect the public health, safety and welfare, including safety and security considerations, the rights of others to exercise free speech and freedom of assembly, and minimizing the disruption to governmental business;
- (c) facilitate public assembly and communication between people;
- (d) designate areas under the Managing Agency's control, for free speech activities as specified in this rule that are necessary to protect the public health, safety and welfare, including safety and security considerations, the rights of others to exercise free speech and freedom of assembly, and minimizing the disruption to governmental business; and
- (e) establish guidelines to facilitate constitutionally protected free speech activities and public assembly.
- (2) This rule is intended to further the following governmental interests:
- (a) to facilitate constitutionally protected free speech activities and public assembly;
- (b) to provide for lawful time, place and manner rules regarding free speech activities necessary to protect the public health, safety and welfare;
- (c) to provide safety and security of all persons visiting or using state facilities and grounds;
- (d) to minimize disruption to or interruption of the conduct of state business;
- (e) to maintain unobstructed and efficient flow of pedestrian and vehicular traffic between and within state facilities and grounds in order to provide safety and security of persons, emergency vehicle access, and assure accessibility to public services;
- (f) to provide all persons their guaranteed right of free speech and freedom of assembly without harm or interruption; and
- (g) to inform persons of their responsibilities regarding littering, damage to, and vandalism of state facilities and grounds.

**R23-20-2. Authority.**

This rule is adopted pursuant to the authority granted to the Board under Sections 63A-5-103 and 63A-5-204. The Managing Agency may adopt policies and procedures to implement this rule.

**R23-20-3. Definitions.**

The definitions of rule R23-19-3 shall apply to this rule R23-20. In addition, the following definitions shall apply for purposes of this rule:

(1) "Free Speech" and "Freedom of Assembly" means the exercise of free speech and freedom of assembly as protected by the constitutions of the state of Utah and the United States.

(2) "Free Speech Activity" or "Free Speech Activities" means the use of an area of the state facilities and grounds for a demonstration, rally, leafleting, press conference, vigil, march or parade that is available for such activity under this rule, by one or more persons for constitutionally protected free speech or assembly.

(a) "Advanced Planned Free Speech Activity" means a free speech activity that can be reasonably scheduled in advance of its occurrence, such that the Managing Agency may lawfully require compliance with certain requirements as specified in this rule.

(b) "Short-Notice Free Speech Activity" means a free speech activity that arises out of, or is related to events or other public issued activities which cannot be reasonably anticipated far enough in advance of the occurrence to reasonably allow compliance with the requirements for an advanced planned free speech activity.

(3) "Demonstration" means the assembly of a group of individuals that join together to express a point of view openly.

(4) "Rally" means to hold an open gathering of a group of individuals of similar purpose to join together to express a point of view openly.

(5) "Leafleting" means the continuous unsolicited distribution of leaflets, buttons, handbills, pamphlets, flyers or any other written or similar materials indiscriminately to pedestrians or passers by.

(6) "Press Conference" is an organized formal assembly called by an individual or group to announce or express a point of view to the public utilizing the press and other media.

(7) "Vigil" means an assembly of an individual or individuals who come together to demonstrate their solidarity by an occasion or devotional watching or observance.

(8) "March" or "Parade" means the organized assembly of individuals who are celebrating or expressing a point of view while moving from one location to another.

(9) "Public Areas" are all areas of the state facilities and grounds open to the public.

**R23-20-4. Free Speech and Freedom of Assembly; In General.**

Unless specifically regulated by this rule as to time, place or manner, all free speech and freedom of assembly may occur in all areas of the state facilities and grounds in any lawful form or manner as guaranteed by the constitutions of the state of Utah and the United States.

**R23-20-5. Time, Place, and Manner of Free Speech Activities.**

(1) Free Speech and Assembly Promoted and Encouraged. Free speech and freedom of assembly, as protected by the constitutions of the state of Utah and United States, is promoted and encouraged at state facilities and grounds. Free speech activities, as specifically defined in this rule, are subject to lawful time, place and manner rules regarding free speech activities necessary to protect the public health, safety and welfare, including safety and security considerations, the rights of others to exercise free speech and freedom of assembly, and minimizing the disruption to governmental business.

(2) Subject to Facility Use Rules, Exception. Free speech activities shall be subject to R23-19-1 et seq., except that, in the case of conflict, the provisions of this rule R23-20 shall control.

(3) Time.

(a) Free speech activities held outdoors may take place 24 hours a day subject to duration requirements specified in this rule.

(b) Free speech activities held indoors may take place during the hours such public areas are open to the public, generally between 8:00 a.m. to 5:00 p.m.

(4) Place.

(a) Health, safety and welfare restricted areas that may not be reserved for a free speech activity are the vehicular traveled portions of roads, roadways or parking lots, areas directly in front of or adjacent to parking garages' entrances or exits, paths of egress or access to emergency stairs and emergency egress hallways, areas under construction which are hazardous to non-construction workers, and those specific portions of the state facilities and grounds that contain storage, utilities and technology servicing the state facilities and grounds or other areas, which either must be available for prompt repair, are not open for public use or represent a danger to members of the public.

(b) In order to protect the public health, safety and welfare and allow for public accessibility to and the conduct of state business, a demonstration, rally, parade, march or vigil may only be conducted on the public areas of the grounds and not inside the facilities.

(c) Notwithstanding any other provision of this rule, there is no registration requirement for free speech leafleting. In order to protect the public, health, safety and welfare and allow for public accessibility to and the conduct of state business, free speech activity leafleting, as defined in this rule, is allowed at state facilities and grounds in the areas open to the public, without interference from state security, provided that it is done in a non-aggressive manner and does not prevent other individuals from passing along sidewalks and through doorways. The state is allowed to enforce any and all applicable statutes and ordinances regarding blocking public sidewalks, blocking hallways, disorderly conduct, blocking entrances to public buildings, garage entries, assault, battery and the like consistent with the requirements of the constitutions of the state of Utah and the United States. Leafleting is not allowed by placing leaflets on vehicles on the state facilities and grounds.

(5) Manner.(a) Registration and Scheduling.

(i) All free speech activities shall comply with the following requirements, except that leafleting shall not be subject to any registration requirements.

(ii) An advanced planned free speech activity shall register as soon as reasonably possible, but not less than seven (7) days in advance of the free speech activity by registering with the Managing Agency.

(iii) Persons registering will provide the following information: the name of the sponsoring organization; the name and contact information of a contact person or agent; the type of free speech activity; the date, time and duration of the free speech activity; the public area requested for use; the number of anticipated participants; and a list of equipment and services to be used in connection with the free speech activity. Registration shall be on a standard form prepared by the Managing Agency.

(iv) If a person or group fails to register due to a short-notice free speech activity, they may still conduct the free speech activity provided it does not create a problem of public safety or interfere with the time and location of a previously scheduled free speech activity in the same public area and meets all the other requirements of this rule. In the case of such problem of public safety or interference, the Managing Agency will coordinate with the applicant in reasonable efforts to find an alternative reasonable time or location.

(b) Priority.

(i) The scheduling assignment of public areas shall be made on a first-come, first-serve basis.

(ii) In the case of scheduling conflicts, first priority in the use of the public areas shall be given to government business and/or state sponsored activities where the authorized governmental official is reserving the public area for an expressed governmental or state need. Free speech activities shall be given priority over community service, commercial and private activities. In the case of such problem of public safety or interference, the Managing Agency will coordinate with the applicant in reasonable efforts to find an alternative reasonable time or location.

(iii) No group or individual will be denied access to or use of a public area unless the proposed free speech activity violates this rule, applicable law, conflicts with a scheduled state sponsored activity, or conflicts with the time and location of a previously scheduled free speech activity.

(c) Consistent with the protections of the Utah and United States constitutions in order to preserve the free speech rights of others, outbursts or similar actions which disrupts or is likely to disrupt any government meeting or proceeding, is prohibited.

**R23-20-6. Expedited Appeals-Free Speech Activities.**

(1) Claims eligible for expedited appeal. The following determinations of claims regarding a free speech activity may be appealed as provided below:

(a) A determination by the Managing Agency that a proposed event or activity is a commercially related special event and not exempted as a free speech activity;

(b) A claim by an applicant that the Managing Agency's denial, or condition of approval, of a proposed route, time or location for a free speech activity constitutes a violation of this rule or an unlawful time, place or manner restriction; or

(c) Any other claim by an applicant that any action by the state regarding the proposed free speech activity impermissibly burdens constitutionally protected rights of the applicant, sponsor, participants or spectators.

(2) Process for Expedited Appeal;

(a) The State acknowledges an obligation to process appeals regarding a free speech activity promptly so as to not unreasonably inhibit or unlawfully burden constitutionally protected activities. Any time limit stated below may be lengthened if agreed to by the appellant and the Managing Agency.

(i) As soon as reasonably possible, but no later than two (2) working days after receipt of a completed registration, the Managing Agency shall issue a determination, which may include lawful conditions, or notice of denial of the registration application.

(b) The Managing Agency may deny the requested activity if:

(i) the requested activity does not comply with the applicable rules;

(ii) the registrant attempts to register a free speech activity, but the Managing Agency determines that it is a commercial activity;

(iii) the event would disrupt, conflict or interfere with a state sponsored activity, a time or place reserved for another free speech activity, the operation of state business, and such determination is in accordance with applicable constitutional provisions; and/or

(iv) the event poses a safety or security risk to persons or property and such determination is in accordance with applicable constitutional provisions.

(c) The Managing Agency may place conditions on the approval that alleviates such concerns and such conditions are in accordance with this rule and applicable constitutional provisions.

(i) If the applicant disagrees with a denial of the request or conditions placed on the approval, the applicant may appeal the Managing Agency's determination by delivering the written appeal and reasons for the disagreement to the Managing Agency.

(ii) Within three (3) working days after the Managing Agency receives the written appeal, the Managing Agency may modify or affirm the determination.

(iii) If the matter is still unresolved after the issuance of the Managing Agency's reconsideration determination, the applicant may appeal the matter, in writing, within ten (10) calendar days to the Executive Director of the Department of Administrative Services who will determine the process of the appeal and provides for a determination within five (5) working days.

(e) If the applicant for a free speech activity needs a more expeditious process of an appeal, upon written request of the applicant, the Attorney General or designee may advise the Executive Director of the Department of Administrative Services or the Managing Agency of the need to make an immediate consideration of the appeal.

**R23-20-7. Expedited Review of Free Speech Concern.**

If any person claims to be inhibited from the exercise of constitutionally protected free speech by a public officer, officer or other person at any state facilities and grounds, such person is advised to promptly notify the Managing Agency. The Managing Agency will then take reasonable steps in an attempt to resolve the matter.

**KEY: rally, free speech, assembly**

**Date of Enactment or Last Substantive Amendment: June 7, 2007**

**Authorizing, and Implemented or Interpreted Law: 63A-5-103, 63A-5-204**



**Environmental Quality, Air Quality  
R307-121**

**General Requirements: Eligibility of Expenditures for Purchase of Vehicles that Use Cleaner Burning Fuels for Corporate and Individual Income Tax Credits**

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)  
DAR FILE NO.: 29797  
FILED: 04/05/2007, 08:52

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the change is to clarify and simplify the language of the rule, and to incorporate the changes in Section 59-10-1009.

SUMMARY OF THE RULE OR CHANGE: The Air Quality Board is proposing the following changes to Rule R307-121: 1) the Board is proposing to update the references to statute throughout Rule R307-121; 2) the Board is proposing to reference statute to define terms that are already defined in the statutes; 3) the Board is proposing to require applicants to submit a copy of the current vehicle registration for each OEM or converted vehicle for which a tax credit is sought; 4) the Board is proposing to require proof of the certification for converted vehicles and special mobile equipment; and 5) the Board is proposing to remove Sections R307-121-3, R307-121-7, R307-121-8, and R307-121-9 because they are not currently required.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-2-104, 59-7-605, and 59-10-1009

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There is no change in costs for state government, because the new requirements detailed in these revisions would simply codify current administrative practices relating to the tax credit. Other changes to the rule clarified and simplified language.
- ❖ LOCAL GOVERNMENTS: Local governments are not affected by this change.
- ❖ OTHER PERSONS: There is no change in costs for other persons, because the new requirements detailed in these revisions would simply codify current administrative practices relating to the tax credit.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no change in costs for affected persons, because the new requirements detailed in these revisions would simply codify current administrative practices relating to the tax credit.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact is expected on businesses, because the new requirements detailed in these revisions would simply codify current administrative practices relating to the tax credit. Dianne R. Nielson, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@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 05/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2007

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

### R307. Environmental Quality, Air Quality.

#### ~~R307-121. General Requirements: Eligibility of Expenditures for Purchase of Vehicles that Use Cleaner Burning Fuels for Corporate and Individual Income Tax Credits.~~

##### ~~R307-121-1. Purpose.~~

~~— This rule provides taxpayers with the criteria and procedures to obtain certification from the board that a vehicle is eligible for a credit under 59-7-605 and 59-10-127.~~

##### ~~R307-121-2. Definitions.~~

~~— Definitions. The following additional definitions apply to R307-121.~~

~~— "Conversion System" means a package which may include fuel, ignition, emissions control, and engine components that are modified, removed, or added to a motor vehicle or a special mobile equipment to make that vehicle or equipment an eligible vehicle.~~

~~— "Eligible" means that the vehicle or special mobile equipment:~~

- ~~— (i) is fueled by propane, natural gas, or electricity;~~
- ~~— (ii) is fueled by other fuel the Air Quality Board determines annually on or before July 1, to be at least as effective as fuels under (i) above in reducing air pollution; or~~
- ~~— (iii) meets the clean fuel vehicle standards specified in Part C of Title II of the federal Clean Air Act.~~

~~— "OEM vehicle" is defined in 63-34-202 to mean a vehicle manufactured by the original vehicle manufacturer or its contractor to use a clean fuel.~~

~~— "Special Mobile Equipment" is defined in 59-7-605(1)(d) and 59-10-127(1)(d).~~

##### ~~R307-121-3. Anti-Tampering Policy.~~

~~— No person may convert a motor vehicle to use a clean fuel in a manner that violates Section 203(a) of the Act or the "Interim Tampering Enforcement Policy" of the Environmental Protection Agency, June 15, 1974.~~

##### ~~R307-121-4. Proof of Purchase for OEM Vehicle.~~

~~— To obtain certification from the board that a vehicle is eligible, proof of purchase shall be made by submitting the following documents to the executive secretary:~~

~~— (1)(a) a copy of the Manufacturer's Statement of Origin or equivalent manufacturer's documentation showing that the vehicle is an OEM vehicle, or~~

~~— (b) if within a county with an inspection and maintenance (I/M) program, a copy of the vehicle inspection report from an approved I/M station showing that the vehicle meets emission standards for all installed fuel systems, or~~

~~— (c) a signed statement by an American Service Excellence (ASE) certified technician that includes the vehicle identification number and states that the vehicle is an eligible OEM vehicle, or~~

~~— (d) if the vehicle is a government agency fleet vehicle, documentation from the appropriate motorpool or government agency representative that sold the vehicle that the vehicle is an OEM vehicle, and~~

~~— (2) an original or copy of the purchase order, customer invoice, or receipt including the vehicle identification number (VIN).~~

##### ~~R307-121-5. Proof of Purchase for Vehicle Converted to Alternate Fuels.~~

~~— To obtain certification from the board that a conversion of a motor vehicle to be fueled by clean fuel is eligible, proof of purchase shall be made by submitting the following documentation to the executive secretary:~~

~~— (1) VIN;~~

~~— (2) fuel type before conversion;~~

~~— (3) fuel type after conversion;~~

~~— (4) either:~~

~~— (a) if within a county with an I/M program, a copy of the vehicle inspection report from an approved station showing that the converted alternate fuel vehicle meets all county emissions requirements for all installed fuel systems, or~~

~~— (b) a signed statement by an ASE certified technician that includes the VIN and states that the conversion is functional, or~~

~~— (c) if the vehicle is a government agency fleet vehicle, documentation from the appropriate motorpool or government agency representative that sold the vehicle that the converted vehicle is eligible.~~

~~— (5) If the vehicle is newly converted within one year of the tax year in which the credit is to be claimed:~~

~~— (a) conversion system manufacturer;~~

~~— (b) conversion system model number;~~

~~— (c) date of the conversion;~~

~~— (d) name, address, and phone number of the person that converted the vehicle.~~

##### ~~R307-121-6. Procedures for Obtaining Certification by the Board for Special Mobile Equipment.~~

~~— To obtain certification from the board that a conversion of special mobile equipment to be fueled by clean fuel is eligible, proof of purchase shall be made by submitting the following documentation to the executive secretary:~~

~~— (1) description of special mobile equipment for which credit is to be claimed;~~

~~— (2) fuel type before conversion;~~

~~— (3) fuel type after conversion;~~

~~— (4) the conversion system manufacturer and model number;~~

~~— (5) the date of the conversion;~~

~~— (6) the name, address and phone number of the person that converted the special mobile equipment; and~~

~~— (7) if special mobile equipment is converted from one clean fuel to another, documentation that either carbon monoxide or hydrocarbon emissions were reduced as a result of the conversion to the new fuel.~~

##### ~~R307-121-7. Procedures for Obtaining Certification by the Board for Fuel Conversion Systems.~~

~~— (1) For vehicles:~~

~~— (a) The executive secretary will issue a certificate, stating that the fuel conversion system for a specific fuel, vehicle class, and engine type has been certified by the Board, if the system manufacturer submits the following information to the executive secretary and if the executive secretary decides the conversion system has met all applicable requirements:~~

~~— (i) description of each conversion system, fuel used, vehicle certification class (including vehicle type and vehicle weight class), and engine type;~~

~~— (ii) Federal Test Procedure (FTP) mass emissions test data which:~~

~~— (A) is collected in high altitude conditions as defined by the Environmental Protection Agency (EPA) using EPA approved~~

equipment, test procedures and practices, and meeting EPA emissions certification standards, as defined in 40 CFR Part 86;

— (B) shows that tests conducted before and after installation of the conversion system demonstrate a reduction in total emissions and that there is no increase in emissions for each regulated pollutant compared to emission levels when operated on the original fuel prior to the conversion;

— (C) is tested on two vehicles for each vehicle certification class which have accumulated at least 4,000 miles each;

— (iii) system engineering specifications.

— (b) The executive secretary will issue a certificate if the federal Environmental Protection Agency has certified the conversion system, or if the fuel conversion system has been certified by a state whose certification standards are recognized by the Board.

— (c) Special provisions:

— (i) After conversion, dual fuel or flexible fuel vehicles shall be required to undergo at least one Federal Test Procedure on conventional fuel and must demonstrate that the EPA emissions certification standards in 40 CFR Part 86 for that vehicle type and model year on the conventional fuel are being met.

— (ii) The executive secretary may waive the requirement for testing to be conducted at high altitude, specified in (1)(a)(ii)(A) above, if the manufacturer demonstrates that the conversion system provides an equivalent emission reduction.

— (iii) Acceptability of Canadian data will be determined on a case-by-case basis after demonstrating to the satisfaction of the executive secretary that the test is equivalent to the Federal Test Procedure.

— (iv) Vehicle conversions must comply with EPA Mobile Source Enforcement Memorandum No. 1A., dated June 25, 1974.

— (2) For special fuel mobile equipment:

— (a) The executive secretary will issue a certificate, stating that the fuel conversion system for a specific fuel and mobile equipment engine type has been certified by the Board, if the system manufacturer submits the following information to the executive secretary and if the executive secretary decides the conversion system has met all applicable requirements:

— (i) description of each conversion system, fuel used, and mobile equipment engine type;

— (ii) emissions test data showing that the conversion system results in an emission reduction of total emissions and that there is no increase in emissions for each regulated pollutant in comparison with emission levels when operated on the original fuel prior to the conversion; and

— (iii) system engineering specifications.

— (b) The executive secretary will issue a certificate if the federal Environmental Protection Agency has certified the conversion system or if the fuel conversion system has been certified by a state whose certification standards are recognized by the Board.

— (c) The executive secretary shall evaluate the certification of conversion system for special fuel mobile equipment on a case-by-case basis as new technologies are improved.

— (3) Certification by other states may be accepted by the executive secretary if it meets the requirements specified in (1) and (2) above.

#### **R307-121-8. Revocation of Certification.**

— The executive secretary will revoke the certification of a conversion system if an investigation finds that a certified conversion system exceeds the level of emissions for which it was certified, taking into account deterioration because of age or other reasonable concern.

#### **R307-121-9. Duty to Acknowledge Proof of Purchase.**

— The executive secretary will acknowledge receipt of proofs specified in R307-121 by signing the relevant written statement provided on forms prescribed by the State Tax Commission.]

#### **R307-121. General Requirements: Clean Fuel Vehicle Tax Credits.**

##### **R307-121-1. Purpose and Authorization.**

— This rule is authorized by 59-7-605 and 59-10-1009. These statutes establish criteria and definitions used to determine eligibility for an income tax credit. R307-121 establishes procedures to provide proof of purchase to the board for an item for which an income tax credit is allowed under 59-7-605 and 59-10-1009.

##### **R307-121-2. Definitions.**

— Definitions. The following additional definitions apply to R307-121.

— "Conversion Equipment" means a package which may include fuel, ignition, emissions control, and engine components that are modified, removed, or added to a motor vehicle or special mobile equipment to make that vehicle or equipment eligible.

— "Eligible" means:

— (i) an OEM vehicle; or

— (ii) a vehicle or special mobile equipment on which conversion equipment has been installed that meets the definition of "Certified by the Board" that is found in 59-7-605 and 59-10-1009.

— "OEM vehicle" is defined in 19-1-402(8).

##### **R307-121-3. Procedures for OEM Vehicles.**

— To demonstrate that a vehicle is eligible, proof of purchase shall be made by submitting the following documents to the executive secretary:

— (1)(a) a copy of the Manufacturer's Statement of Origin or equivalent manufacturer's documentation showing that the vehicle is an OEM vehicle, or

— (b) a signed statement by an American Service Excellence (ASE) certified technician that includes the vehicle identification number and states that the vehicle is an eligible OEM vehicle; and

— (2) an original or copy of the purchase order, customer invoice, or receipt including the vehicle identification number (VIN); and

— (3) a copy of the vehicle registration.

##### **R307-121-4. Procedures for Vehicles Converted to Clean Fuels.**

— To demonstrate that a conversion of a motor vehicle to be fueled by clean fuel is eligible, proof of purchase shall be made by submitting the following documentation to the executive secretary:

— (1) VIN;

— (2) fuel type before conversion;

— (3) fuel type after conversion;

— (4)(a) if within a county with an I/M program, a copy of the vehicle inspection report from an approved station showing that the converted alternate fuel vehicle meets all county emissions requirements for all installed fuel systems, or

— (b) a signed statement by an ASE certified technician that includes the VIN and states that the conversion is functional;

— (5) each of the following:

— (a) conversion system manufacturer,

— (b) conversion system model number,

— (c) date of the conversion, and

(d) name, address, and phone number of the person that converted the vehicle;

(6) proof of certification required in 59-10-1009(1)(b) or 59-7-605(1)(b); and

(7) a copy of the vehicle registration.

**R307-121-5. Procedures for Special Mobile Equipment Converted to Clean Fuels.**

To demonstrate that a conversion of special mobile equipment to be fueled by clean fuel is eligible, proof of purchase shall be made by submitting the following documentation to the executive secretary:

(1) description, including serial number, of the special mobile equipment for which credit is to be claimed;

(2) fuel type before conversion;

(3) fuel type after conversion;

(4) the conversion system manufacturer and model number;

(5) the date of the conversion;

(6) the name, address and phone number of the person that converted the special mobile equipment; and

(7) proof of certification required in 59-10-1009(1)(b) or 59-7-605(1)(b).

**KEY:** air pollution, alternative fuels, ~~tax exemptions~~ tax credits, motor vehicles

**Date of Enactment or Last Substantive Amendment:** ~~January 9, 2003~~ 2007

**Notice of Continuation:** March 26, 2002

**Authorizing, and Implemented or Interpreted Law:** 19-2-104; 19-1-402; 59-7-605; ~~59-10-127~~ 59-10-1009



Environmental Quality, Air Quality  
**R307-122**  
 General Requirements: Eligibility of Expenditures for Purchase and Installation Costs of Fireplaces and Wood Stoves that Use Cleaner Burning Fuels

**NOTICE OF PROPOSED RULE**

(Repeal)  
 DAR FILE NO.: 29798  
 FILED: 04/05/2007, 08:53

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Air Quality Board is proposing to repeal Rule R307-122 because it is no longer authorized under Sections 59-10-128 and 59-7-606. Section 59-10-128 was repealed in 2006 and Section 59-7-606 was limited to tax years 1992 through 2002; therefore, Rule R307-122 is no longer authorized under Utah Statute.

SUMMARY OF THE RULE OR CHANGE: The Air Quality Board is proposing to repeal Rule R307-122 because it is no longer authorized under Sections 59-10-128 and 59-7-606.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-2-104, 59-10-128, and 59-7-606

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: No change is expected to the state budget, because there was no tax credit authorized.

❖ LOCAL GOVERNMENTS: This rule did not apply to local governments.

❖ OTHER PERSONS: There is no change in costs for other persons, because there was no tax credit authorized.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no change in costs for affected persons, because there was no tax credit authorized.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact is expected for businesses, because there was no tax credit authorized. Dianne R. Nielson, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@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 05/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2007

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

**R307. Environmental Quality, Air Quality.**  
~~**[R307-122. General Requirements: Eligibility of Expenditures for Purchase and Installation Costs of Fireplaces and Wood Stoves that Use Cleaner Burning Fuels.**~~  
**R307-122-1. Definitions.**

Definitions. The following additional definitions apply to R307-122:

- ~~"Fireplaces and wood stoves" using clean burning fuels are:~~
- ~~(1) continual feed wood pellet stoves~~
- ~~(2) high mass wood stoves~~
- ~~(3) natural gas or propane free standing fireplaces or inserts, but not including fireplace log systems, or~~
- ~~(4) any wood burning stove, fireplace, or fireplace insert that is certified by the Environmental Protection Agency in accordance with test procedures prescribed in 40 CFR Section 60.534.~~

**R307-122-2. Amount of Credit.**

As specified in Subsection 59-7-606 and Section 59-10-128, there is a credit against tax otherwise due under this chapter in an amount equal to 10%, up to a maximum of \$50, of the total of:

- (1) the purchase price or
- (2) both the purchase price and installation cost of each approved fireplace or wood stove.

**R307-122-3. Proof of Purchase.**

Proof of purchase of an item for which a credit specified in R307-122-2 is allowed shall be made by submitting to the executive secretary, or representative appointed by the executive secretary:

- (1) a copy of the sales receipt clearly stating the make, model, and price paid for the equipment and installation, and
- (2) a completed copy of the "Clean Fuel Alternative Tax Credit Stoves/Fireplaces" form identifying the:
  - (a) owner's name and address;
  - (b) owner's social security number or taxpayer identification number;
  - (c) dealer's name and address;
  - (d) fireplace make and model;
  - (e) fireplace serial number;
  - (f) purchase price;
  - (g) installer's name and company name; and
  - (h) installation cost.

**R307-122-4. Duty to Acknowledge Proof of Purchase.**

An authorized representative of the executive secretary will acknowledge receipt of proofs specified in R307-122-3 by signing the relevant written statement provided on the State Tax Commission "Clean Fuel Alternative Tax Credit Stoves/Fireplaces" form.

**KEY:** air pollution, tax exemptions, stove\*, fireplace\*

**Date of Enactment or Last Substantive Amendment:** September 15, 1998

**Notice of Continuation:** March 26, 2002

**Authorizing, and Implemented or Interpreted Law:** 19-2-104; 59-10-128; 59-7-606]



Environmental Quality, Air Quality  
**R307-405**  
 Permits: Major Sources in Attainment  
 or Unclassified Areas (PSD)

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 29796

FILED: 04/05/2007, 08:50

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The federal Prevention of Significant Deterioration (PSD) permitting program in 40 CFR 52.21 is incorporated by reference into Rule R307-405. The purpose of the change is to update the incorporation by reference to the most recent version of the CFR, dated 07/01/2006. In addition, there are a number of

other changes to the rule text that are required because of the change in the incorporation date.

SUMMARY OF THE RULE OR CHANGE: The federal Prevention of Significant Deterioration (PSD) permitting program in 40 CFR 52.21 is incorporated by reference into Rule R307-405. The attached rule change updates the incorporation by reference to the most recent version of the CFR, dated 07/01/2006. The following updates to 40 CFR 52.21 will be included: 1) on 11/29/2005, the Environmental Protection Agency (EPA) finalized rules to implement the 8-hour ozone National Ambient Air Quality Standard. As part of this rulemaking, EPA made minor changes to the federal PSD rules to add NOx as a precursor to ozone; 2) a minor correction to 52.21 was published in the Federal Register on 06/22/2005 to remove paragraphs (b)(2)(iii)(h)(1) and (2). These paragraphs were not previously incorporated into Rule R307-405 so this change has no practical effect in Utah. There are a number of other changes to the rule text that are required because of the change in the incorporation date. These changes are nonsubstantive; 3) on 10/27/2003, EPA promulgated the Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion. On 03/17/2006 the DC Circuit Court of Appeals vacated these new provisions. The incorporated text in Rule R307-405 has been modified to remove the provisions that were vacated by the DC Court of Appeals. This is nonsubstantive change because Utah's PSD rule was based on an earlier version of the federal rule and therefore, did not contain the Equipment Replacement Provisions; 4) the incorporation by reference of the definitions of "emissions unit" and "replacement unit", effective 01/06/2004 is no longer required as a separate incorporation because these definitions are included in the 07/01/2006 version of the federal rule. In addition, paragraph 40 CFR 52.21(aa)(6)(ii) that was added in the 01/06/2004 version of the CFR does not need to be incorporated separately from the rest of section (aa); and 5) a numbering error in Section R307-405-3 was corrected by moving the definition of "air quality related values" to become paragraph (3) instead of paragraph (2).

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

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR 52.21, July 1, 2006, and 40 CFR 51.166, March 17, 2006

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: No costs or savings are expected because the cost of Air Quality's activities in issuing approval orders under Rule R307-405 is covered by fees paid by the sources.

❖ LOCAL GOVERNMENTS: Because the amendment does not create new requirements for sources owned or operated by local government, no change in costs is expected for other persons.

❖ OTHER PERSONS: There is no change in costs for other persons, because NO2 is already a PSD pollutant and NO2 is typically measured as NOx. Further, it is not anticipated that



any additional sources will be regulated due to this change in applicability.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no change in costs for affected persons, because NO2 is already a PSD pollutant and NO2 is typically measured as NOx. Further, it is not anticipated that any additional sources will be regulated due to this change in applicability.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No change in costs is expected for businesses, because NO2 is already a PSD pollutant and NO2 is typically measured as NOx. Further, it is not anticipated that any additional sources will be regulated due to this change in applicability. Dianne R. Nielson, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@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 05/31/2007

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 5/23/2007 at 2:00 PM, DEQ Bldg, 150 N 1950 W, Main Conference Room, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2007

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

### **R307. Environmental Quality, Air Quality.**

#### **R307-405. Permits: Major Sources in Attainment or Unclassified Areas (PSD).**

##### **R307-405-1. Purpose.**

This rule implements the federal Prevention of Significant Deterioration (PSD) permitting program for major sources and major modifications in attainment areas and maintenance areas as required by 40 CFR 51.166. This rule does not include the routine maintenance, repair and replacement provisions that were ~~stayed~~ vacated by the DC Circuit Court of Appeals on ~~December 23, 2003, pending appeal~~ March 17, 2006. This rule does not include the clean unit and pollution control project provisions that were vacated by the DC Circuit Court of Appeals on June 24, 2005. This rule supplements, but does not replace, the permitting requirements of R307-401.

##### **R307-405-2. Applicability.**

(1) Except as provided in (2), the provisions of 40 CFR 52.21(a)(2), effective ~~March 3, 2003~~ July 1, 2006, are hereby incorporated by reference.

(2) ~~The following provisions that apply to clean units and pollution control projects are not incorporated because these provisions were vacated by the DC Court of Appeals on June 24, 2005:~~

~~(a) [The provisions in] 40 CFR 52.21(a)(2)(iv)(e) [are not incorporated by reference].~~

~~(b) [F]the last sentence in 40 CFR 52.21(a)(2)(iv)(f) [is not incorporated by reference]. and~~

~~(c) [The provisions in] 40 CFR 52.21(a)(2)(vi) [are not incorporated by reference].~~

(3) Notwithstanding the exemptions in R307-401, any source that is subject to R307-405 is subject to the requirement to obtain an approval order in R307-401-5 through 8.

##### **R307-405-3. Definitions.**

(1) Except as provided in (2) below, the definitions contained in 40 CFR 52.21(b), effective ~~March 3, 2003~~ July 1, 2006, are hereby incorporated by reference.

(2) ~~"Air Quality Related Values," as used in analyses under 40 CFR 52.21(p) that is incorporated by reference in R307-405-17, means those special attributes of a Class I area, assigned by a federal land manager, that are adversely affected by air quality.~~

~~(3)(a)(i) "Major Source Baseline Date" means:~~

(A) in the case of particulate matter:

(I) for Davis, Salt Lake, Utah and Weber Counties, the date that EPA approves the PM10 maintenance plan that was adopted by the Board on July 6, 2005;

(II) for all other areas of the State, January 6, 1975;

(B) in the case of sulfur dioxide:

(I) for Salt Lake County, the date that EPA approves the sulfur dioxide maintenance plan that was adopted by the Board on January 5, 2005;

(II) for all other areas of the State, January 6, 1975; and

(C) in the case of nitrogen dioxide, February 8, 1988.

(ii) "Minor Source Baseline Date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or R307-405 submits a complete application under the relevant regulations. The trigger date is:

(A) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

(B) in the case of nitrogen dioxide, February 8, 1988.

(iii) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(A) the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(i)(D) or (E) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 or R307-405; and

(B) in the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(iv) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM10 increments, except that the executive secretary shall rescind a minor source baseline date where it

can be shown, to the satisfaction of the executive secretary, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM10 emissions.

(b) In the definition of "baseline area" in 40 CFR 52.21(b)(15)(ii)(b) insert the words "or R307-405" after "Is subject to 40 CFR 52.21".

(c) "Reviewing Authority" means the executive secretary.

(d)(i) The term "Administrator" shall be changed to "executive secretary" throughout R307-405, except as provided in (ii).

(ii) The term "Administrator" shall be changed to "EPA Administrator" in the following incorporated sections:

- (A) 40 CFR 52.21(b)(17),
- (B) 40 CFR 52.21(b)(37)(i),
- (C) 40 CFR 52.21(b)(43),
- (D) 40 CFR 52.21(b)(48)(ii)(c),
- (E) 40 CFR 52.21(b)(50)(i),
- (F) 40 CFR 52.21(l)(2),
- (G) 40 CFR 52.21(p)(2), and
- (H) 40 CFR 51.166(q)(2)(iv).

(e) The definition of "emissions unit" in 40 CFR 52.21(b)(7), effective January 6, 2004, is hereby incorporated by reference.

(f) The definition of "replacement unit" in 40 CFR 52.21(b)(33), effective January 6, 2004, is hereby incorporated by reference.

(g) The following paragraphs definitions or portions of definitions that refer apply to clean units and pollution control projects are not incorporated [by reference] because these provisions were vacated by the DC Court of Appeals on June 24, 2005:

(i) in the definition of "major modification" in 40 CFR 52.21(b)(2), subparagraph (iii)(h),

(ii) in the definition of "net emissions increase" in 40 CFR 52.21(b)(3), subparagraph (iii)(b),

(iii) in the definition of "net emissions increase" in 40 CFR 52.21(b)(3), subparagraph (vi)(d),

(iv) the definition of "pollution control project" in 40 CFR 52.21(b)(32), and

(v) the definition of "clean unit" in 40 CFR 52.21(b)(42).

(f) The following definitions or portions of definitions that apply to the equipment repair and replacement provisions are not incorporated because these provisions were vacated by the DC Circuit Court of Appeals on March 17, 2006:

(i) in the definition major modification in 40 CFR 52.21(b)(2), the second sentence in subparagraph (iii)(a),

(ii) the definition of "process unit" in 40 CFR 52.21(b)(55),

(iii) the definition of "functionally equivalent component" in 40 CFR 52.21(b)(56),

(iv) the definition of "fixed capital cost" in 40 CFR 52.21 (b)(57), and

(v) the definition of "total capital investment" in 40 CFR 52.21(b)(58).

(3) "Air Quality Related Values," as used in analyses under 40 CFR 52.21 (p) that is incorporated by reference in R307-405-17, means those special attributes of a Class I area, assigned by a federal land manager, that are adversely affected by air quality.

(4) "Heat input" means heat input as defined in 40 CFR 52.01(g).

(5) "Title V permit" means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to R307-415.

(6) "Title V Operating Permit Program" means R307-415.

(7) The definition of "Good Engineering Practice (GEP) Stack Height" as defined in R307-410 shall apply in this rule.

(8) The definition of "Dispersion Technique" as defined in R307-410 shall apply in this rule.

#### **R307-405-5. Area Redesignation.**

Any person may petition the Board to change the classification of an area designated under R307-405-4, except for mandatory Class I areas designated under R307-405-4(1).

(1) The petition shall contain a discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic and social and energy effects of the proposed redesignation.

(2) The petition shall contain a demonstration that the proposed redesignation meets the criteria outlined in Section VIII of the State Implementation Plan and 40 CFR 51.166(e) and (g) effective July 1, 2006, that is hereby incorporated by reference.

#### **R307-405-6. Ambient Air Increments.**

The provisions of 40 CFR 52.21(c), effective ~~March 3, 2003~~ July 1, 2006, are hereby incorporated by reference.

#### **R307-405-7. Ambient Air Ceilings.**

The provisions of 40 CFR 52.21(d), effective ~~March 3, 2003~~ July 1, 2006, are hereby incorporated by reference.

#### **R307-405-9. Stack Heights.**

The provisions of 40 CFR 52.21(h), effective ~~March 3, 2003~~ July 1, 2006, are hereby incorporated by reference.

#### **R307-405-10. Exemptions.**

(1) The provisions of 40 CFR 52.21(i)(1)(vi) through (viii), effective ~~March 3, 2003~~ July 1, 2006, are hereby incorporated by reference.

(2) The provisions of 40 CFR 52.21(i)(2) through (5), effective ~~March 3, 2003~~ July 1, 2006, are hereby incorporated by reference.

#### **R307-405-11 Control Technology Review.**

The provisions of 40 CFR 52.21(j), effective ~~March 3, 2003~~ July 1, 2006, are hereby incorporated by reference.

#### **R307-405-12. Source Impact Analysis.**

The provisions of 40 CFR 52.21(k), effective ~~March 3, 2003~~ July 1, 2006, are hereby incorporated by reference.

#### **R307-405-13. Air Quality Models.**

The provisions of 40 CFR 52.21(l), effective ~~March 3, 2003~~ July 1, 2006, are hereby incorporated by reference.

#### **R307-405-14. Air Quality Analysis.**

(1) The provisions of 40 CFR 52.21(m)(1)(i) through (iv), (vi), and (viii), effective ~~March 3, 2003~~ July 1, 2006, are hereby incorporated by reference.

(2) The provisions of 40 CFR 52.21(m)(2) and (3), effective ~~March 3, 2003~~ July 1, 2006, are hereby incorporated by reference.

#### **R307-405-15. Source Information.**

The provisions of 40 CFR 52.21(n), effective ~~March 3, 2003~~ July 1, 2006, are hereby incorporated by reference.

#### **R307-405-16. Additional Impact Analysis.**

The provisions of 40 CFR 52.21(o), effective ~~March 3, 2003~~ July 1, 2006, are hereby incorporated by reference.

**R307-405-17. Sources Impacting Federal Class I Areas: Additional Requirements.**

(1) The provisions of 40 CFR 52.21(p), effective [~~March 3, 2003~~] July 1, 2006, are hereby incorporated by reference.

(2) The executive secretary will transmit to the EPA Administrator a copy of each permit application relating to a major stationary source or major modification and provide notice to the EPA Administrator of every action related to the consideration of such permit.

**R307-405-18. Public Participation.**

(1) Except as provided in (2), the provisions of 40 CFR 51.166(q)(1) and (2), effective [~~March 3, 2003~~] July 1, 2006, are hereby incorporated by reference.

(2) The phrase "within a specified time period" in 40 CFR 51.166(q)(1) shall be replaced with the phrase "within 30 days of receipt of the PSD permit application".

**R307-405-19. Source Obligation.**

(1) Except as provided in (2) below, the provisions of 40 CFR 52.21(r), effective [~~March 3, 2003~~] July 1, 2006, are hereby incorporated by reference.

(2) The parenthetical phrase in the first sentence in 40 CFR 52.21(r)(6) shall be changed to read "(other than projects at a source with a PAL)."

**R307-405-20. Innovative Control Technology.**

(1) Except as provided in (2), the provisions of 40 CFR 52.21(v), effective [~~March 3, 2003~~] July 1, 2006, are hereby incorporated by reference.

(2)(a) The reference to "40 CFR 124.10" in 40 CFR 52.21(v)(1) shall be changed to "R307-405-18".

(b) 40 CFR 52.21(v)(2) shall be changed to read "The executive secretary shall, with the consent of the governors of other affected states, determine that the source or modification may employ a system of innovative control technology, if:".

**R307-405-21. Actuals PALs.**

(1) Except as provided in [~~(3)~~](2), the provisions of 40 CFR 52.21(aa)(1) through (5) and (7) through (15), effective [~~March 3, 2003~~] July 1, 2006, are hereby incorporated by reference.

(2) [~~The provisions of 40 CFR 52.21(aa)(6), effective January 6, 2004, are hereby incorporated by reference.~~

(3)(a) The reference to "51.165(a)(3)(ii) of this chapter" in 40 CFR 52.21(aa)(4)(ii) shall be changed to "R307-403".

(b) The reference to "51.165(a)(3)(ii) of this chapter" in 40 CFR 52.21(aa)(8)(ii)(2) shall be changed to "R307-403".

(c) The references to "70.6(a)(3)(iii)(B) of this chapter" in 40 CFR 52.21(aa)(14)(ii) shall be changed to "R307-415-6a(3)(c)(ii)".

(d) The date of "March 3, 2003" in 40 CFR 52.21(aa)(15)(i) and (ii) shall be changed to [~~"the effective date of this rule"~~] "June 16, 2006".

**KEY: air pollution, PSD, Class I area**

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

**Notice of Continuation: June 16, 2006**

**Authorizing, and Implemented or Interpreted Law: 19-2-104**



## Health, Health Care Financing, Coverage and Reimbursement Policy **R414-60A** Drug Utilization Review Board

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 29807

FILED: 04/11/2007, 15:01

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is necessary to implement policies and procedures for the Drug Utilization Review (DUR) Board.

**SUMMARY OF THE RULE OR CHANGE:** This new rule outlines the DUR Board composition and membership requirements. It also specifies the board's responsibilities to oversee the Medicaid drug program to ensure proper utilization of drugs among Medicaid clients and providers.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 26-18-3, 26-1-5, and 26-18-102; and 42 CFR 456.716

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** There is no budget impact because this rule simply implements the DUR Board policies and procedures, and does not affect costs or services for Medicaid clients.

❖ **LOCAL GOVERNMENTS:** There is no budget impact because local governments do not fund the Medicaid drug program.

❖ **OTHER PERSONS:** There is no budget impact because this rule simply implements the DUR Board policies and procedures, and does not affect costs or services for Medicaid clients.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no budget impact because this rule simply implements the DUR Board policies and procedures, and does not affect costs or services for Medicaid clients.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Implementation of the preferred drug list will be positive for 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 at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 06/08/2007

AUTHORIZED BY: David N. Sundwall, Executive Director

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

##### **R414-60A. Drug Utilization Review Board.**

##### **R414-60A-1. Introduction and Authority.**

(1) The Drug Utilization Review (DUR) Board aids in pharmacy policy oversight and drug utilization.

(2) The DUR Board is authorized under 42 CFR 456.716 and Sections 26-18-2, 3, and 102.

##### **R414-60A-2. DUR Board Composition and Membership Requirements.**

(1) The Director of the Division of Health Care Financing (DHCF) shall act on behalf of the Executive Director of the Utah Department of Health regarding all DUR Board issues, and shall appoint the following groups of individuals to four-year terms on the DUR Board:

(a) Four physicians from recommendations received from the Utah Medical Association.

(b) One physician engaged in Academic Medicine.

(c) Three pharmacists from recommendations received from the Utah Pharmacy Association.

(d) One pharmacist engaged in Academic Pharmacy.

(e) One dentist from recommendations received from the Utah Dental Association.

(f) One individual from recommendations received from the Pharmaceutical Manufacturers Association (PhRMA).

(g) One consumer representative.

(2) Membership Requirements.

(a) An appointee may not serve more than two consecutive terms in one of the 12 board positions listed in Subsection R414-60A-2(1). Terms separated by more than an interruption of two months are not consecutive.

(b) If the Division does not receive recommendations to fill a vacant position within 30 days of a request, the Division may submit for consideration a list of potential candidates to an organization listed in Subsection R414-60A-2(1).

(c) If there are no willing nominees for appointment when an appointed term has expired, the DHCF Director may reappoint:

(i) physician members on the board to additional non-consecutive terms as needed;

(ii) pharmacist members on the board to additional non-consecutive terms as needed; and

(iii) a dentist, PhRMA member, or consumer member to additional non-consecutive one-year terms as needed.

(3) Notwithstanding the requirements in Subsection R414-60A-2(1), the Director shall adjust the length of terms upon

appointment so that one-half of the DUR Board is appointed every two years.

(4) The DUR Board shall elect a chairperson to a one-year term from among its members. The chairperson may serve consecutive terms if reelected by the board.

(5) When a vacancy occurs on the board, the Director shall appoint a replacement for the unexpired term of the vacating member.

(6) The DUR Board shall be managed by a non-voting board manager appointed from the pharmacy group within DHCF.

(7) Other individuals of the DHCF pharmacy group are non-voting ex-officio advisory members of the DUR Board.

##### **R414-60A-3. Responsibilities and Functions.**

(1) The DUR Board shall meet monthly in a public forum, except when meeting in executive session or in petitions subcommittee.

(2) The board may elect to not meet in a given month if circumstances do not require a meeting. The board shall meet at least ten times per year.

(3) The DUR Board chairperson shall conduct all meetings. The DUR Board manager shall conduct meetings if the chairperson is not present.

(4) In accordance with Section 26-18-105, notice shall be given for a DUR Board meeting in which prior authorization criteria is considered.

(5) The DUR Board manager shall schedule meetings, set agendas, provide meeting materials, keep minutes, record DUR Board business, notify DHCF when vacancies occur, provide meeting notices, and coordinate functions between the DUR Board and DHCF.

(6) DHCF shall rely upon the DUR Board to carry out the Division's federal and state responsibilities for the Medicaid drug program to address the following issues:

(a) Adverse reactions to drugs.

(b) Therapeutic appropriateness.

(c) Overutilization and underutilization.

(d) Appropriate use of generic drugs.

(e) Therapeutic duplication.

(f) Drug-disease contraindications.

(g) Drug-drug interactions.

(h) Incorrect drug dosage and duration of treatment.

(i) Drug allergy interactions.

(j) Clinical abuse and misuse.

(k) Identification and reduction of the frequency of patterns of fraud, abuse, and gross overuse.

(l) Inappropriate or medically unnecessary care among physicians, pharmacists, and recipients.

(m) Prior Authorization criteria.

(7) The DUR Board shall consider recommendations, criteria, and standards produced by the Pharmacy and Therapeutics (P&T) Committee in matters regarding a preferred drug list. The P&T Committee is established in Rule R414-60B.

##### **KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment: 2007**

**Authorizing, and Implemented or Interpreted Law: 26-18-3; 26-1-5**



Health, Health Care Financing,  
Coverage and Reimbursement Policy  
**R414-60B**  
Preferred Drug List

**NOTICE OF PROPOSED RULE**

(New Rule)  
DAR FILE NO.: 29808  
FILED: 04/11/2007, 15:11

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is necessary to implement policies and procedures for the Pharmacy and Therapeutics (P&T) Committee, which reviews and recommends cost effective drugs to establish a preferred drug list (PDL).

SUMMARY OF THE RULE OR CHANGE: This new rule outlines client eligibility requirements, program access requirements, service coverage, P&T Committee and membership requirements, P&T Committee responsibilities and functions, and reimbursement methodology for the PDL.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-18-3, 26-1-5, and 26-18-2.4

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There is an estimated annual savings of \$2,524,930 to the General Fund and \$6,375,070 in federal funds.
- ❖ LOCAL GOVERNMENTS: There is no budget impact because local governments do not fund the Medicaid pharmacy program.
- ❖ OTHER PERSONS: The majority of pharmaceutical manufacturers lose a portion of \$8,900,000 in revenue because of the PDL.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The estimated cost for a single pharmaceutical manufacturer is less than \$1,000,000.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Implementation of the preferred drug list will be positive for 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 at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 06/08/2007

AUTHORIZED BY: David N. Sundwall, Executive Director

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

**R414-60B. Preferred Drug List.**

**R414-60B-1. Introduction and Authority.**

(1) The Division of Health Care Financing (DHCF) has established a Preferred Drug List (PDL) to operate within the pharmacy program and at the Division's discretion.

(2) The Preferred Drug List is authorized under Section 26-18-2.4.

**R414-60B-2. Client Eligibility Requirements.**

A PDL is available to categorically and medically needy individuals.

**R414-60B-3. Program Access Requirements.**

A PDL is established for certain therapeutic classes of drugs and is available through the point of sale system of any Medicaid provider. At its discretion, DHCF establishes and implements the scope and therapeutic classes of drugs.

**R414-60B-4. Service Coverage.**

(1) Upon the recommendation of the Pharmacy and Therapeutics (P&T) Committee, DHCF pharmacy staff select the therapeutic classes and select the most clinically effective and cost effective drug or drugs within each class.

(2) The preferred drug or drugs are dispensed without prior authorization requirements.

(3) All other non-preferred drugs within each therapeutic class require prior authorization, unless the prescriber writes "medically necessary - "dispense as written" on the prescription and has justification in the patient's medical record substantiating the medical necessity of the non-preferred drug.

**R414-60B-5. P&T Committee Composition and Membership Requirements.**

(1) The DHCF Director shall appoint the members of the P&T Committee for a two-year term. DHCF has the option of making the appointments renewable.

(2) DHCF staff request nominations for appointees from professional organizations within the state. These nominations are then given to the Director for selection and appointment.

(a) If there are no recommendations within 30 days of a request, DHCF may submit a list of potential candidates to professional organizations for consideration.

(b) If there are no willing nominees for appointment from professional organizations, the Director may seek recommendations from DHCF staff.

(3) The P&T Committee consists of one physician from each of the following specialty areas:

- (a) Internal Medicine;
- (b) Family Practice Medicine;
- (c) Psychiatry; and
- (d) Pediatrics.

(4) The P&T Committee consists of one pharmacist from each of the following areas:

- (a) Pharmacist in Academia;
- (b) Independent Pharmacy;
- (c) Chain Pharmacy; and
- (d) Hospital Pharmacy.

(5) DHCF shall appoint one voting committee manager.

(6) Up to two non-voting ad hoc specialists participate on the committee at the committee's invitation.

(7) An individual considered for nomination must demonstrate no direct connection to and must be independent of the pharmaceutical manufacturing industry.

(8) The P&T Committee shall elect a chairperson to a one-year term from among its members. The chairperson may serve consecutive terms if reelected by the committee.

(9) When a vacancy occurs on the committee, the Director shall appoint a replacement for the unexpired term of the vacating member.

#### **R414-60B-6. P&T Committee Responsibilities and Functions.**

(1) Under Section 26-18-106, the P&T Committee functions as a professional and technical advisory board to DHCF in the formulation of a PDL.

(2) P&T Committee recommendations must:

(a) represent the majority vote at meetings in which a majority of voting members are present; and

(b) include votes by at least one committee member from the group identified in Subsection R414-60B-5(3) and one member from the group identified in Subsection R414-60B-5(4)

(3) The P&T Committee manager shall schedule meetings, set agendas, provide meeting materials, keep minutes, record committee business, notify the Director when vacancies occur, provide meeting notices, and coordinate functions between the committee and DHCF.

(4) Notice for a P&T Committee meeting shall be given in accordance with Section 26-18-105.

(5) The P&T Committee chairperson shall conduct all meetings. The P&T Committee manager shall conduct meetings if the chairperson is not present.

(6) P&T Committee meetings shall occur at least quarterly.

(7) P&T Committee meetings shall be open to the public except when meeting in executive session.

(8) The committee shall:

(a) review drug classes and make recommendations to DHCF for PDL implementation;

(b) review new drugs, new drug classes or both, to make recommendations to DHCF for PDL implementation;

(c) review drugs or drug classes as DHCF assigns or requests;

(d) review drugs within a therapeutic class and make a recommendation to DHCF for the preferred drug or drugs within the therapeutic class; and

(e) review evidence based criteria and drug information.

#### **R414-60B-7. Reimbursement.**

Pharmaceuticals are reimbursed using the established fee schedule in the Utah Medicaid State Plan, which is incorporated by reference in Section R414-1-5.

#### **KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment: 2007**

**Authorizing, and Implemented or Interpreted Law: 26-18-3; 26-1-5**



## Human Services, Substance Abuse and Mental Health, State Hospital

### **R525-8**

## Forensic Mental Health Facility

#### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 29802

FILED: 04/09/2007, 08:55

#### **RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** During the review of this rule, it was determined that a code citation needed to be corrected and an amendment needed to be made in the allocation of forensic beds to clarify and update procedure to match current practice.

**SUMMARY OF THE RULE OR CHANGE:** Subsection 77-18-1(14) has been changed to Subsection 77-18-1(13). Psychiatric need and legal status have been added to clarify the basis for bed allocation. Priorities set by the Mental Health and Corrections Advisory Council have been removed because that body's responsibilities are already stated in law at Subsection 62A-15-605(3).

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 62A-15-902(2)(c)

#### **ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget based on this amendment. Allocation of beds is based on the needs stated in this rule change and space is only made available when a person leaves the hospital, so no additional openings in bed space are made available because of this amendment.

❖ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government budgets based on this amendment. Allocation of beds is based on the needs stated in this rule change and space is only made available when a person leaves the hospital, so no additional openings in bed space are made available because of this amendment.

❖ **OTHER PERSONS:** There are no anticipated costs or savings to other persons because they neither allocate beds on the forensic unit nor do they house individuals that are waiting to be placed in the forensic unit for evaluation.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule change merely defines priority of placement criterion for the forensic unit beds, and does not generate additional costs such as work or needed equipment to maintain compliance requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After careful review, the Department of Human Services has determined that this rule will have no financial impact on businesses in the State of Utah. Lisa-Michele Church, Executive Director

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

HUMAN SERVICES  
SUBSTANCE ABUSE AND MENTAL HEALTH,  
STATE HOSPITAL  
UTAH STATE HOSPITAL  
PROVO UT 84603-0270, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Thom Dunford at the above address, by phone at 801-538-4519, by FAX at 801-538-9892, or by Internet E-mail at TDUNFORD@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 05/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 06/08/2007

AUTHORIZED BY: Mark I Payne, Director

**R525. Human Services, Substance Abuse and Mental Health, State Hospital.**

**R525-8. Forensic Mental Health Facility.**

**R525-8-1. Forensic Mental Health Facility.**

(1) Pursuant to the requirements of UCA Section 62A-15-902(2)(c), the forensic mental health facility allocates beds to serve the following categories:

(a) prison inmates displaying mental illness, as defined in UCA Section 62A-15-602, necessitating treatment in a secure mental health facility;

(b) criminally adjudicated persons found guilty and mentally ill or undergoing evaluation for mental illness under UCA Title 77, Chapter 16a;

(c) criminally adjudicated persons found guilty and mentally ill or undergoing evaluation for mental illness under UCA Title 77, Chapter 16a, who are also mentally retarded;

(d) persons found by a court to be incompetent to proceed in accordance with UCA Title 77, Chapter 15, or not guilty by reason of insanity under UCA Title 77, Chapter 14; and

(e) persons who are civilly committed to the custody of a local mental health authority in accordance with UCA Title 62A, Chapter 15, Part 6, and who may not be properly supervised by the Utah State Hospital because of a lack of necessary security, as determined by the superintendent or his designee.

(2) Additionally, the beds serve the following categories:

(a) persons undergoing an evaluation to determine competency to proceed under UCA Title 77, Chapter 15; and

(b) persons committed to the state hospital as a condition of probation under UCA Subsection 77-18-1(~~14~~13).

**R525-8-2. Bed Allocation.**

Beds ~~shall be~~ are allocated based on current psychiatric need and legal status ~~priorities as determined by the Mental Health and Corrections Advisory Council established pursuant to UCA Section 62A-15-605~~. Highest priority shall be given to those cases which are specifically required to be admitted to the Utah State Hospital by Utah law.

**R525-8-3. No Admission Because of Capacity.**

When capacity in the forensic mental health facility has been met, the hospital shall not admit any persons to the forensic mental health facility until a bed becomes available. In such an event the hospital will work cooperatively with the court to find a resolution.

**KEY: forensic, mental health, facility**

**Date of Enactment or Last Substantive Amendment:** ~~June 4, 2004~~2007

**Notice of Continuation:** May 16, 2006

**Authorizing, and Implemented or Interpreted Law:** 62A-15-902(2)(c)



Insurance, Administration  
**R590-102-9**  
Individual Resident and Non-Resident  
License Fees

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 29824

FILED: 04/16/2007, 15:45

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Legislation passed during the 2007 Legislative Session required this change be made. The bill passed was S.B. 199. (DAR NOTE: S.B. 199 (2007) is found at Chapter 325, Laws of Utah 2007, and was effective 04/30/2007.)

SUMMARY OF THE RULE OR CHANGE: This change adds a fee of \$25 for the required filing by a dual-licensed title licensee.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-3-103

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This change will add an addition \$25 to the state's general fund for every filing done by a dual-licensed title licensee. There are currently only 62 title licensees that hold dual title licenses and/or real estate or mortgage lender licenses. These persons must file a form requesting approval each time they conduct title business. There is no way to estimate how many will file this form.

- ❖ LOCAL GOVERNMENTS: This change deals solely with the department and its title insurance licensees. It should have no effect on local governments.
- ❖ OTHER PERSONS: This will add an additional \$25 expense to a title licensee obtaining a dual license. As with most costs, these may be passed onto the consumer but the increase in premium or service charge would be minimal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This will add an additional \$25 expense to a title licensee obtaining a dual license. As with most costs, these may be passed onto the consumer but the increase in premium or service charge would be minimal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will add an additional \$25 expense to title licensees with a dual license. 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](mailto: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 05/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2007

AUTHORIZED BY: Jilene Whitby, Information Specialist

#### **R590. Insurance, Administration.**

##### **R590-102. Insurance Department Fee Payment Rule.**

##### **R590-102-9. Individual Resident and Non-Resident License Fees.**

- (1) Biennial resident and non-resident full-line individual initial license or renewal fee for two-year period:
  - (a) initial license fee - due with application: \$72;
  - (b) express initial license fee - due with application: \$72;
  - (c) renewal license fee if renewed prior to renewal deadline - due with renewal application: \$72;
  - (d) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: \$122;
  - (e) lapsed license reinstatement fee if reinstated 31 days through 730 days after renewal deadline - due with application for reinstatement: \$122.
- (2) Biennial resident and non-resident limited-line individual initial or renewal license fee, for two-year period:
  - (a) initial license fee - due with application: \$47;

(b) renewal license fee if renewed prior to renewal deadline - due with renewal application: \$47;

(c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: \$97;

(d) lapsed license reinstatement fee if reinstated 31 days through 730 days after renewal deadline - due with application for reinstatement: \$97.

(3) Fee for addition of producer classification or line of authority to individual producer license - due with request for additional classification or line of authority: \$27.

(4) The biennial initial and renewal full-line producer and limited-line producer fee includes the following services for which no additional fee is required:

- (a) issuance of letter of certification;
- (b) issuance of letter of clearance;
- (c) issuance of duplicate license;
- (d) individual continuing education services; and
- (e) other services provided to the licensee.

(5) The biennial initial and renewal individual license fee includes services the department will provide during the year. The fee is paid in advance of providing the services.

(6) Title insurance product or service approval for dual licensed title licensee form filing fee - due with filing: \$25.

**KEY: insurance**

**Date of Enactment or Last Substantive Amendment:** ~~August 29, 2006~~ **2007**

**Notice of Continuation:** January 26, 2007

**Authorizing, and Implemented or Interpreted Law:** 31A-3-103



## Natural Resources, Parks and Recreation

### **R651-205-16**

#### Huntington Reservoir

#### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 29806

FILED: 04/10/2007, 15:06

#### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add Huntington Reservoir waters to the others where safety is a concern for the recreating public, by prohibiting the use of motors who have a manufacturer-listed horsepower of 10 or more.

SUMMARY OF THE RULE OR CHANGE: On waters in the State of Utah, there are many smaller bodies of water where public safety becomes an issue when higher horsepower vessels are used. Therefore, in the interest of public safety, this amendment will add another smaller body of water (Huntington Reservoir) to the list of those who allow only motors of less than 10 horsepower.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 73-18-4(1)(c)



## ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This amendment prohibits use of motors 10 horsepower or above and there is no anticipated cost or savings to the state budget with this change.
- ❖ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government with this change, as it applies to Huntington Reservoir, a small lake in the Manti La Sal National Forest.
- ❖ OTHER PERSONS: Those having a motor of 10 or more horsepower will be required to get a motor as required in this amendment, in order to use the waters at many state parks.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Those wanting to use the waters at the named water bodies in Rule R651-205, must comply with the rule and this amendment adding Huntington Reservoir to the list.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After review, it is found that there is no fiscal 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](mailto: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 05/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2007

AUTHORIZED BY: Mary Tullius, Director

**R651. Natural Resources, Parks and Recreation.****R651-205. Zoned Waters.****R651-205-16. Huntington Reservoir.**

The use of motors whose manufacturer listed horsepower is 10 horsepower or more is prohibited.

**KEY: boating, parks**

**Date of Enactment or Last Substantive Amendment:** ~~August 16, 2005~~ **June 7, 2007**

**Notice of Continuation:** April 18, 2006

**Authorizing, and Implemented or Interpreted Law:** 73-18-4(1)(c)



## Public Safety, Driver License

# R708-43

### YES or NO Notification

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 29805

FILED: 04/10/2007, 14:19

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Because of the federal Driver Privacy Protection Act of 1994 (DPPA), it was determined that the division could not provide a digitized photo (YIP) along with other information to a requester.

SUMMARY OF THE RULE OR CHANGE: Because the division could not provide a digitized photo, all references to a digitized photo (YIP) in the rule needed to be deleted.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53-3-109(7)(f)

## ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: Because of this rule change, the division will not be collecting \$0.25 for the photos.
- ❖ LOCAL GOVERNMENTS: There is no impact to local government because they are not involved in providing driver license information.
- ❖ OTHER PERSONS: Other persons will not have to pay an additional \$0.25 fee for a photo.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A requester will still have to pay a fee to receive the information they want except for a digitized photo. Because they cannot get a digitized photo, they will not have to pay the extra \$0.25.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Requesters will still be charged a reasonable fee for each YON request. However they will not be charged the extra \$0.25 due to this rule change. Scott T. Duncan, Commissioner

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

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

## DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2007

AUTHORIZED BY: Nannette Rolfe, Director

**R708. Public Safety, Driver License.**

**R708-43. YES or NO Notification.**

**R708-43-3. Definitions.**

(1) "Yes or No Verification (YON)" means an electronic notification that information submitted by a requester matches the information on the driver license division database. For this purpose Yes verifies a match of (a) through (c), and No indicates one or more items do not match the database information, including:

- (a) name;
- (b) driver license, driving privilege card or identification card number; and
- (c) date of birth.

~~(2) "Yes or No Verification including a digitized photo (YIP)" means an electronic notification that information submitted by a requester matches the information on the driver license division database and includes the most recent digitized photo.~~

**R708-43-4. Procedures.**

(1) Upon receipt of a request for verification pursuant to Subsection 53-3-109(1)(c)(iii), the division will search the driver license division database and furnish a YON [~~or YIP~~] on any person who has a driver license, driving privilege card or identification card in the state.

(2) The YON [~~or YIP~~] contains certain personal identifying information and is protected from public disclosure for privacy reasons in accordance with the federal Driver Privacy Protection Act of 1994 (DPPA), Subsection 53-3-109, and Title 63, Chapter 2.

**R708-43-5. Requirements.**

(1) A YON[s] [~~or YIPs~~] shall only be released to qualified requesters in accordance with the DPPA and Subsection 53-3-109(1)(c)(iii).

(2) In order to receive a YON[~~or YIP~~], the requester must:

- (a) provide acceptable proof that they are a depository institution as defined in Section 7-1-103;
- (b) enter into a contract with the division or its designated provider to obtain a YON[~~or YIP~~];
- (c) provide the name, Utah driver license number, driving privilege number or identification card number and date of birth of the person who is the subject of the request;
- (d) pay required fees as established by the division;
- (e) agree to comply with state and federal laws regulating the use and further disclosure of information provided; and
- (f) comply with auditing processes and procedures required by the division or its designated provider.

**R708-43-6. Electronic Transactions.**

Requests for a YON[s] [~~and YIPs~~] will be transacted electronically as approved by the division.

**KEY: driver license verification**

**Date of Enactment or Last Substantive Amendment: [~~August 8, 2006~~]2007**

**Authorizing, and Implemented or Interpreted Law: 53-3-109(1)(c)**



**End of the Notices of Proposed Rules Section**

## NOTICES OF CHANGES IN PROPOSED RULES

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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 31, 2007. At its option, the agency may hold public hearings.

From the end of the waiting period through August 29, 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.

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**The Changes in Proposed Rules Begin on the Following Page.**

Insurance, Administration
R590-240
Exemption of Student Health Programs
From Insurance Code

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 29420
Filed: 04/13/2007, 15:09

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change in proposed rule is to respond to comments provided during the comment period and hearing.

SUMMARY OF THE RULE OR CHANGE: The title is changed to more accurately reflect what the rule does. In Subsection R590-240-4(1), certificate is added, as well as degrees. Subsection R590-240-5(3) provides more flexibility to secure assets needed to pay claims due under the student health program. Subsection R590-240-5(9) removes the requirement that materials used in the sale or advertising of the student health program be given to the department before they are used and requires they be given to the department on an annual basis. Subsection R590-240-7(5) provides that any inconsistencies between the provisions of this rule and previous orders exempting student health plans are resolved in this 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 15. 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-1-103 and 31A-2-201

ANTICIPATED COST OR SAVINGS TO:

- THE STATE BUDGET: Whatever small change in the department's work flow this may create with the change in filing requirements will not be enough of an impact on the department to require temporary or full time help.
LOCAL GOVERNMENTS: This rule will not impact local governments. It deals solely with the relationship between the department and schools providing insurance for their students.
OTHER PERSONS: The changes to this rule allow for the reduction of liability on the sponsor of the student health program by allowing affiliates of the sponsor to use their assets to secure payment of incurred costs of the student health program. Consumers of the student health programs will not be affected financially by these changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to this rule allow for the reduction of liability on the sponsor of the student health program by allowing affiliates of the sponsor to use their assets to secure payment of incurred costs of the

student health program. Consumers of the student health programs will not be affected financially by these changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule should result in no fiscal impact on private businesses. Higher education institutions will benefit from the exemption. 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 05/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2007

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-240. Procedure to Obtain Exemption of Student Health Programs From Insurance Code.

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R590-240-4. Supporting Facts.

(1) Student health programs are offered only to eligible members at institutions. These institutions have an interest in providing affordable health care coverage to their students in order to enable the students to receive limited health care to ensure that progress toward a degree or certificate is not impeded by unattended medical needs. In some instances, student health programs may also be offered to the spouses of students and other dependents of students, as well.

(2) Student health programs are not established to enable the institutions to make a profit from providing health care coverage. Providing or arranging for health care services for students is not the primary purpose of institutions; it is only incidental to the institutions' primary purpose, which is to educate those that matriculate with the institution. In addition, the economic impact on health care providers directly, and the public indirectly, from students receiving medical services and then not being able to pay for those services, is mitigated by providing students at institutions with access to affordable health care coverage through student health programs.

(3) An institution is either a state institution under the direct control of, and supervised by, the Board, or it must be accredited by

the Northwest Commission on Colleges and Universities. In order to be accredited, an institution must meet strict accounting standards, and be able to demonstrate it is financially solid. An institution must therefore comply with the strict accounting and financial requirements of the Board or the Northwest Commission on Colleges and Universities, which would include the need to reflect on the financial statements of the institution any liability for risks the institution assumes, or costs the institutions may incur, for its student health program. Any shortfall in providing health care services at the student health center would become the obligation of the institution.

#### **R590-240-5. Exemption Requirements.**

A student health program may be exempted from the provisions of the Utah Insurance Code if it meets all of the requirements of this Section 5, applies for exemption under Section 6, and the exemption is granted.

- (1) A student health program must be:
  - (a) established by an institution;
  - (b)(i) owned by an institution; or
  - (ii) owned by the trustees of a trust established by an institution; and
  - (c) operated by:
    - (i) an institution; or
    - (ii) the institution's authorized agent or affiliate.
- (2) The primary purpose of the institution must be higher education, and not the providing of a student health program.
- (3) ~~[The student health program or the institution or both must provide adequate assets to secure payment of all risks of the student health program by:~~
  - ~~— (a) placing, into a trust account dedicated for the payment of eligible member health care service claims, assets in an amount and type that would be required under Chapter 17 of the Utah Insurance Code;~~
  - ~~— (b) under such terms and conditions as the commissioner determines by written order, pledging, or obtaining a pledge of, assets dedicated for the payment of eligible member health care service claims in an amount and type that would be required under Chapter 17 of the Utah Insurance Code;~~
  - ~~— (c) under such terms and conditions as the commissioner determines by written order, obtaining performance guarantees or payment guarantees or both from third parties, in an amount and type that would be required under Chapter 17 of the Utah Insurance Code; or~~
  - ~~— (d) using a combination of Subsections 5(3)(a), 5(3)(b) and 5(3)(c);]~~ Payment of covered claims of the student health program must be secured by adequate assets:
    - (a) that are:
      - (i) secured by being:
        - (A) pledged;
        - (B) guaranteed;
        - (C) contributed;
        - (D) placed in trust; or
        - (E) using a combination of Subsections 5(3)(a)(i)(A), 5(3)(a)(i)(B), 5(3)(a)(i)(C), and 5(3)(a)(i)(D); and
      - (ii) secured under Subsection 5(3)(a)(i) by:
        - (A) the student health program;
        - (B) the institution that organizes, adopts, or establishes the student health program;
        - (C) the owner of the institution described in Subsection 5(3)(a)(ii)(B);

(D) an affiliate of the entity described in Subsection 5(3)(a)(ii)(C); or

(E) a combination of the entities described in Subsections 5(3)(a)(ii)(A), 5(3)(a)(ii)(B), 5(3)(a)(ii)(C), and 5(3)(a)(ii)(D); and

(b) in an amount and type that would be required under Chapter 17 of the Utah Insurance Code; and

(c) under such terms and conditions as the commissioner determines by written order.

(4) The student health program may not be offered to or enroll anyone other than an eligible member.

(5) The student health program must have a comprehensive legal structure that demonstrates that:

(a) the assets described in Subsection 5(3) will be administered in a fiduciary manner to assure that assets are available to provide eligible health care services and to provide payments to health care providers, as outlined in any contracts between the student health program and health care providers;

(b) the student health program will be administered by an experienced administrator; and

(c) the student health program shall be administered according to contracts between:

- (i)(A)(I) the student health program; or
- (II) the institution; or
- (III) both the student health program and the institution; and

(B) the enrollees; and

(ii)(A)(I) the student health program; or

(II) the institution; or

(III) both the student health program and the institution; and

(B) health care providers.

(6) Except for emergency health care services, or out-of-area or out-of-country health care providers, health care services for those enrolled in the student health program must be provided:

(a) at a student health center; or

(b) pursuant to a contract with health care service providers, by which those health care providers will provide health care services upon a referral from the student health center.

(7) Any supplemental health care services provided by the student health program must:

(a) be obtained from an insurer authorized to provide health insurance;

(b) be backed by assets under the conditions set forth in Subsection 5(3); or

(c) use a combination of Subsections 5(7)(a) and 5(7)(b).

(8) The student health program must provide review procedures substantially similar, and materially equal, to those presently in effect for insurers, health maintenance organizations, and limited health programs.

(9) The student health program or the institution or both ~~[must submit all policies, contracts, booklets, advertising, and any presentations relating to the solicitation of the student health program to the department before they are placed into use]~~ shall annually provide the department an informational copy of all current policies, booklets, and advertising.

(10) The student health program or the institution or both must state in a prominent and appropriate place in all policies, contracts, booklets, explanatory material, advertising or other promotional material, and any presentations relating to solicitations of the student health program, that the student health program is not insurance, and the student health program has been exempted from regulation under the Utah Insurance Code, and must cite the date, docket number, and title of the docket by which the exemption was granted.

(11) The student health program must reduce any applicable preexisting condition provisions for any individual covered by the student health program by the amount of previous creditable coverage.

(12) The student health program must provide a certificate of creditable coverage upon request by an individual who was covered by the student health program.

.....

**R590-240-7. Rule and Findings.**

(1) A student health program is an insurer as defined in Section 31A-1-301, and must comply with the requirements of the Utah Insurance Code unless it is exempted from regulation by statute or by this rule.

(2) Pursuant to Subsection 31A-1-103(3)(d)(i), the commissioner finds that a student health program which operates in accordance with the provisions of Section 5, and obtains an order of exemption under Section 6, does not require regulation for the protection of the interests of the residents of this state, and that such student health program is exempt from regulation under the Utah Insurance Code.

(3) If the institution assumes any risk of the student health program, the institution must:

- (i) apply for authority to conduct the business of an insurer, or
- (ii) apply to the commissioner for an exemption under this rule.

(4) Health insurance from an insurer made available by an institution to its eligible members is not exempt from the Utah Insurance Code under this rule, even if the health insurance from a health insurer is integrated into the overall student health program offered by the institution, or use of the institution's student health center is an integral or required part of the health care coverage under the insurer's policy.

(5) Any inconsistencies between the provisions of this rule and any order previously issued exempting a student health program from regulation under the Utah Insurance Code are resolved by incorporating the provisions of this rule.

.....

**KEY: health insurance exemption**

**Date of Enactment or Last Substantive Amendment: 2007**

**Authorizing, and Implemented or Interpreted Law: 31A-1-103; 31A-2-201**



**End of the Notices of Changes in Proposed Rules Section**

# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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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).

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## Commerce, Occupational and Professional Licensing **R156-11a** Cosmetologist/Barber, Esthetician, Electrologist and Nail Technician Licensing Act Rule

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

DAR FILE No.: 29810  
FILED: 04/12/2007, 12:43

### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 11a, provides for the licensure of cosmetologists/barbers, estheticians, electrologists, and nail technicians. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-11a-201(3) provides that the Cosmetology/Barbering, Esthetics, Electrology, and Nail Technology 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. This rule was enacted to clarify the provisions of Title 58, Chapter 11a, with respect to cosmetologists/barbers, estheticians, electrologists, and nail technicians.

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 the rule was last reviewed in July 2002, it has been amended three times. However, the Division has not received any written comments with respect to this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be

continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 11a, with respect to cosmetologists/barbers, estheticians, electrologists, and nail technicians. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements.

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:  
Daniel T. Jones at the above address, by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at [dantjones@utah.gov](mailto:dantjones@utah.gov)

AUTHORIZED BY: F. David Stanley, Director

EFFECTIVE: 04/12/2007



## Commerce, Occupational and Professional Licensing **R156-64** Deception Detection Examiners Licensing Act Rules

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

DAR FILE No.: 29803  
FILED: 04/09/2007, 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: Title 58, Chapter 64, provides for the licensure of deception detection examiners and deception detection interns. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-64-201(3) provides that the Deception Detection Examiners 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. This rule was enacted to clarify the provisions of Title 58, Chapter 64, with respect to deception detection examiners and interns.

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 the rule was last reviewed in July 2002, no written comments have been received by the Division.

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 provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 64, with respect to deception detection examiners and deception detection interns. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements.

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](mailto:cormond@utah.gov)

AUTHORIZED BY: F. David Stanley, Director

EFFECTIVE: 04/09/2007

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**Commerce, Occupational and  
Professional Licensing  
R156-78A  
Prelitigation Panel Review Rules**

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

DAR File No.: 29804  
FILED: 04/09/2007, 16:22

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 78-14-12 provides that the Division of Occupational and Professional Licensing shall be responsible for a medical liability prelitigation program. Subsection 78-14-12(1)(b) provides the Division shall establish procedures for prelitigation consideration of medical liability claims for damages arising out of the provision of or alleged failure to provide health care. This rule was enacted to clarify the provisions of Sections 78-14-12 through 78-14-16 with respect to the medical liability prelitigation program.

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 the rule was last reviewed in July 2002, no written comments have been received by the Division.

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 provides a mechanism to inform persons of the Division's requirements with respect to the medical liability prelitigation program as provided in Sections 78-14-12 through 78-14-16.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

W. Ray Walker at the above address, by phone at 801-530-6256, by FAX at 801-530-6511, or by Internet E-mail at [raywalker@utah.gov](mailto:raywalker@utah.gov)

AUTHORIZED BY: F. David Stanley, Director

EFFECTIVE: 04/09/2007

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**Environmental Quality, Administration  
R305-1  
Records Access and Management**



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

DAR FILE No.: 29809  
FILED: 04/12/2007, 09:16

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 63-2-204(2)(d) allows the agency to specify where and to whom requests for access shall be directed. Subsection 63-2-904(2) allows agencies to specify which parts of the agency have responsibilities under the Government Records Access and Management Act (GRAMA), see also Subsection 63-46a-3(3); the rule also has a few provisions notifying the public of interpretations of GRAMA that the Department of Environmental Quality has made, e.g., how time periods under GRAMA will be calculated.

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.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is important for GRAMA requesters to know where within the agency to direct their requests, and how GRAMA-related responsibilities are allocated within the Department. It is also important for the agency to know when the clock starts ticking on a GRAMA request, which in turn depends on whether the request has been addressed to the appropriate division, see Subsection 63-2-204(6)(a). Finally, Subsection 63-46a-3(3) allows rulemaking where the agency is interpreting a statute, and it is an important principle of administrative law that those interpretations be publicly available. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Laura Lockhart at the above address, by phone at 801-366-0283, by FAX at 801-366-0292, or by Internet E-mail at LLOCKHART@utah.gov

AUTHORIZED BY: Dianne R. Nielson, Executive Director

EFFECTIVE: 04/12/2007



Financial Institutions, Administration  
**R331-22**  
Rule Governing Reimbursement of  
Costs of Financial Institutions for  
Production of Records

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

DAR FILE No.: 29818  
FILED: 04/16/2007, 09:17

**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: Subsection 7-1-301(6) and Section 78-27-48 expressly authorize the Commissioner of Financial Institutions to promulgate rules establishing rates and conditions under which financial institutions that supply information to requesting agencies may seek reimbursement of costs.

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 supporting or opposing written comments have been received since the last notice of continuation.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No other rule establishes cost-reimbursement guidelines for financial institutions that provide information to requesting agencies. Section 78-27-48 requires the Commissioner to have a rule establishing the cost-reimbursement guidelines. Therefore, this rule should be continued.

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

FINANCIAL INSTITUTIONS  
ADMINISTRATION  
Room 201  
324 S STATE ST  
SALT LAKE CITY UT 84111-2393, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Paul Allred at the above address, by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at PALLRED@utah.gov

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 04/16/2007



Health, Epidemiology and Laboratory  
Services, Environmental Services  
**R392-200**

Design, Construction, Operation,  
Sanitation, and Safety of Schools

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

DAR FILE NO.: 29799  
FILED: 04/05/2007, 09:19

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Sections 26-15-2 which authorizes the Department to adopt rules and enforce minimum sanitary standards for the operation and maintenance of schools.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Bureau of Epidemiology has not received any written comments opposing the rule, but the Conference of Local Environmental Health Administrators (CLEHA), the organization comprised of local Environmental Health Directors has given The Utah Department of Health (UDOH) their support of continuation of the rule. An ongoing committee (the School Advisory Committee) composed of local regulators and school district personnel has met to discuss school sanitation issues, and has made recommendations to UDOH to amend the rule. Additionally, UDOH is working with the State Office of Education as a partner to submit proposed changes to the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is a very important aspect of public health and safety protection for school age children statewide. Additionally, UDOH is required by statute to establish minimum sanitation standards for schools. This rule is the sanitation rule established by UDOH and enforced by the local health departments. Proper sanitation regulation of public schools is an important part of protecting public health and a key aspect in reducing adverse health risks of children attending school in the state, and 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: 04/05/2007



Health, Health Care Financing,  
Coverage and Reimbursement Policy

**R414-1**

Utah Medicaid Program

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

DAR FILE NO.: 29819  
FILED: 04/16/2007, 09:35

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law, and Section 26-18-3 requires the Department to administer the Medicaid program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written or oral comments have been received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because it establishes definitions and contains provisions applicable to all rules that implement the Utah Medicaid program. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 04/16/2007

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**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-21  
Physical and Occupational Therapy**

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

DAR FILE No.: 29816  
FILED: 04/16/2007, 08:36

**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: Section 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law, and Section 26-18-3 requires the Department to administer the Medicaid program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written or oral comments have been received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because it implements the provision of physical and occupational therapy for Medicaid clients. The rule also contains criteria to ensure medically necessary and cost effective services under the care of qualified and licensed providers. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at [cdevashrayee@utah.gov](mailto:cdevashrayee@utah.gov)

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 04/16/2007

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**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-38  
Personal Care Service**

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

DAR FILE No.: 29817  
FILED: 04/16/2007, 08:40

**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: Section 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law, Section 26-18-3 requires the Department to administer the Medicaid program, and 42 CFR 440.70 authorizes licensed personnel to provide home health services.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written or oral comments have been received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because it implements the provision of personal care services for Medicaid clients. It also allows licensed registered nurses and personal care aides to provide these services regularly, to maintain the comfort and dignity of homebound clients. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at [cdevashrayee@utah.gov](mailto:cdevashrayee@utah.gov)

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 04/16/2007

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Health, Center for Health Data, Health  
Care Statistics  
**R428-1**

Adoption of Health Data Plan

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

DAR FILE NO.: 29788  
FILED: 04/03/2007, 12:53

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is required by Subsection 26-33a-104(2)(a): "The committee shall: (a) develop and adopt by rule, following public hearing and comments, a health data plan that shall among its elements."

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 Health Care Statistics has not received any written comments during and since the last five-year review of the rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R428-1 establishes the basic operational requirement for the Health Data Committee (HDC) to manage the data collection, analysis, and distribution, that is, to adopt a health data plan through a public process. Since the last five-year review of Rule R428-1, the HDC developed and adopted the Utah Pharmacy Data Plan, Version 1 on 04/22/2004 (to view the plan go to <http://health.utah.gov/hda/UtahPharmacyDataPlan.pdf>). Since 2002, the HDC also updated its Health Data Plan biennially. The Health Data Plan Update documents were included in the HDC biennial report submitted to the Governor and legislators who served on the Health and Human Services Committees. The Health Data Plan Update serves as a strategic planning document for the HDC to identify and monitor priority projects or initiatives. For these Health Data Plan Update document, go to: 2003-2004: <http://health.utah.gov/hda/Reports/Biennial2002.pdf>; 2005-2006: <http://health.utah.gov/hda/Reports/dataplanupdate2004.pdf>; 2007-2008: <http://health.utah.gov/hda/Reports/Biennial2006.pdf>. The Office of Health Care Statistics will continue Rule R428-1 as an important guidance of the HDC operation process.

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

HEALTH  
CENTER FOR HEALTH DATA,  
HEALTH CARE STATISTICS  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY UT 84116-3231, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mike Martin or Wu Xu at the above address, by phone at 801-538-9205 or 801-538-7072, by FAX at 801-538-9916 or 801-538-6694, or by Internet E-mail at [mikemartin@utah.gov](mailto:mikemartin@utah.gov) or [wxu@utah.gov](mailto:wxu@utah.gov)

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 04/03/2007



Health, Center for Health Data, Health  
Care Statistics  
**R428-2**

Health Data Authority Standards for  
Health Data

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

DAR FILE NO.: 29789  
FILED: 04/03/2007, 12:58

**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: This rule is authorized by Section 26-33a-104, which provides for data collection activities and rulemaking to carry out these activities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received since the last review of the rule. The Health Data Committee has reviewed the rule and requested its continuation. Public notice of this rule renewal has been posted at <http://health.utah.gov/hda> for one month. No public comments have been received on this rule or the requested continuation.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the reporting standards which apply to data suppliers, and the classification, control, use, and release of data received by the Health Data Committee pursuant to Title 26, Chapter 33a. Continuation of Rule R428-2 will assure the data definitions, standards, security, and disclosure under the Health Data Authority Act are consistent across all data suppliers, data users, and public inquiries.

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

HEALTH  
CENTER FOR HEALTH DATA,  
HEALTH CARE STATISTICS  
CANNON HEALTH BLDG

288 N 1460 W  
SALT LAKE CITY UT 84116-3231, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Mike Martin or Wu Xu at the above address, by phone at 801-538-9205 or 801-538-7072, by FAX at 801-538-9916 or 801-538-6694, or by Internet E-mail at mikemartin@utah.gov or wxu@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 04/03/2007



Health, Center for Health Data, Health  
Care Statistics  
**R428-5**  
Appeal and Adjudicative Proceedings

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

DAR FILE NO.: 29790  
FILED: 04/03/2007, 13:31

**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: This rule is allowed by Section 26-33a-104 and Title 63, Chapter 46b, Utah Administrative Procedures Act. It is necessary to clarify administrative adjudicative procedures under the Utah Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment was received since the last review of the rule. The Health Data Committee and the Office of Health Care Statistics have reviewed the rule and requested its continuation.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule outlines the formal adjudicative procedures requirements for administrative adjudicative actions of the Health Data Committee (HDC). The Utah Administrative Procedures Act allows administrative agencies to adopt certain procedures by rule if the agency conducts formal administrative adjudicative proceedings. This rule provides appropriate administrative procedures to handle a disagreement, if any, in the new data collection process. Therefore, this rule should be continued.

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

HEALTH  
CENTER FOR HEALTH DATA,  
HEALTH CARE STATISTICS  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY UT 84116-3231, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Mike Martin or Wu Xu at the above address, by phone at 801-538-9205 or 801-538-7072, by FAX at 801-538-9916 or 801-538-6694, or by Internet E-mail at mikemartin@utah.gov or wxu@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 04/03/2007



Health, Center for Health Data, Health  
Care Statistics  
**R428-10**  
Health Data Authority Hospital Inpatient  
Reporting Rule

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

DAR FILE NO.: 29791  
FILED: 04/03/2007, 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: This rule is authorized by Subsection 26-33a-104(3), which requires "the committee may adopt rules to carry out the provisions of this chapter" for data collection, analysis, and dissemination.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Public notice of this rule review and renewal has been posted at the Health Data Committee's web site for a month. The Health Data Committee's System Advisory Committee discussed the rule review and renewal on 02/27/2007. All oral comments were in favor of continuation of the rule. No written comments were received. The Health Data Committee and Office of Health Care Statistics have reviewed the rule and requested its continuation.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the reporting standards and procedures for inpatient discharge data submitted by licensed hospitals in the state of Utah. Continuation of the rule will ensure that the state of Utah continuously carries out its activities in developing and using the statewide inpatient discharge database to improve health care cost, quality, and access.

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

HEALTH  
 CENTER FOR HEALTH DATA,  
 HEALTH CARE STATISTICS  
 CANNON HEALTH BLDG  
 288 N 1460 W  
 SALT LAKE CITY UT 84116-3231, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 Mike Martin or Wu Xu at the above address, by phone at 801-538-9205 or 801-538-7072, by FAX at 801-538-9916 or 801-538-6694, or by Internet E-mail at mikemartin@utah.gov or wxu@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 04/03/2007



Health, Center for Health Data, Health  
 Care Statistics

**R428-12**

Health Data Authority Survey of  
 Enrollees in Health Maintenance  
 Organizations

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

DAR FILE No.: 29792  
 FILED: 04/03/2007, 13:38

**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 is authorized by Subsection 26-33a-104(3), which provides that "the committee may adopt rules to carry out the provisions of this chapter" for data collection, analysis, and dissemination.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Public notice of this rule review and renewal has been posted at the Health Data Committee's web site for a month. The Health Data

Committee's HMO Advisory Committee discussed the rule review and renewal. Written comments were received from three participating Health Maintenance Organizations (HMOs). All comments were in favor of continuation of the rule. The Health Data Committee and Office of Health Care Statistics have reviewed the rule and requested its continuation.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule allows monitoring of satisfaction with the quality and access of care provided by participating Utah HMOs. Continuation of the rule will assure that HMOs are monitored using nationally-recognized standards.

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

HEALTH  
 CENTER FOR HEALTH DATA,  
 HEALTH CARE STATISTICS  
 CANNON HEALTH BLDG  
 288 N 1460 W  
 SALT LAKE CITY UT 84116-3231, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 Mike Martin or Wu Xu at the above address, by phone at 801-538-9205 or 801-538-7072, by FAX at 801-538-9916 or 801-538-6694, or by Internet E-mail at mikemartin@utah.gov or wxu@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 04/03/2007



Health, Center for Health Data, Health  
 Care Statistics

**R428-20**

Health Data Authority Request for  
 Health Data Information

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

DAR FILE No.: 29793  
 FILED: 04/03/2007, 13:41

**NOTICE OF REVIEW AND  
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 26-33a-104, which establishes guidelines by which data suppliers shall be required to provide health data information to the Office for the purpose of expanding the committee's health data plan.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received since the last review of the rule. Public notice of this rule renewal has been posted at <http://health.utah.gov/hda> for one month in February 2007. There have been no public comments on this rule or the requested continuation. The Health Data Committee and the Office of Health Care Statistics have reviewed the rule and requested its continuation.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of Rule R428-20 will allow the Health Data Authority to continue its efforts to reduce health care costs and increase health care quality and access.

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

HEALTH  
CENTER FOR HEALTH DATA,  
HEALTH CARE STATISTICS  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY UT 84116-3231, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mike Martin or Wu Xu at the above address, by phone at 801-538-9205 or 801-538-7072, by FAX at 801-538-9916 or 801-538-6694, or by Internet E-mail at [mikemartin@utah.gov](mailto:mikemartin@utah.gov) or [wxu@utah.gov](mailto:wxu@utah.gov)

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 04/03/2007



Insurance, Administration  
**R590-68**  
Insider Trading of Equity Securities of  
Domestic Stock Insurance Companies

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

DAR FILE No.: 29815  
FILED: 04/13/2007, 17:00

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) gives the commissioner the authority to make rules to implement the provisions of Title 31A. Subsection 31A-5-303(3)(a) allows the commissioner to adopt a rule to "define terms and prescribe conditions regarding securities held in the

ordinary course of business and incident to the establishment or maintenance of a primary or secondary market." This rule deals with transactions exempted from or subject to Section 31A-5-303 and the form and procedure for filing a beneficial ownership of equity securities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R590-68 gives substantial additional guidance regarding Section 31A-5-303. Without this additional and much more detailed guidance, several forms of exemption from the requirements of the statute would not be apparent or effectively available to entities to whom the described situations apply. This lack of guidance would at best be confusing and at worst lead to costly decisions being made in error regarding the form of any insider trading transaction or the absence thereof. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [jwhitby@utah.gov](mailto:jwhitby@utah.gov)

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 04/13/2007



Insurance, Administration  
**R590-85**  
Individual Accident and Health  
Insurance and Individual and Group  
Medicare Supplement Rates

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

DAR FILE No.: 29821  
FILED: 04/16/2007, 11:24

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3)(a) allows the commissioner to write rules to implement the provisions of Title 31A. Section 31A-2-201.1 gives the commissioner authority to set general filing requirements on forms, rates or reports. Subsection 31A-22-605(4)(e) allows for the writing of rules relating to accident and health rating practices. Subsection 31A-22-620(3)(e) authorizes the commissioner to adopt rules to conform Medicare supplement policies and certificates to the requirements of federal laws and regulations. General rate filing, previously filed forms, and experience record requirements are set in Sections R590-85-4 and R590-85-5 of the rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Comments were received on the rule during the comment periods provided for amendments made in the rule in 2003 and 2005. One written comment was received during in 2003 asking to clarify if the rule regulated small and individual health insurance plans. The comments received during the 2005 comment period expressed concern over the limitation of one rate increase per year. There was also a request to define "timely manner". No other comments have been received during this five-year period.

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 standards for rating certain policies. The rule allows insurers to request increases as necessary to maintain a viable block of business and to protect consumers so that they are receiving a product that has benefits that are relative to the premiums they pay. Without the rule, there would be no standard for rating certain individual products. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [jwhitby@utah.gov](mailto:jwhitby@utah.gov)

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 04/16/2007



Insurance, Administration  
**R590-101**  
Appointment and Termination of  
Individuals Licensed as Agents, and  
Organizations Licensed as Agents by  
Insurers

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

DAR FILE No.: 29820  
FILED: 04/16/2007, 10:22

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201 authorizes the commissioner to enact rules to implement Title 31A. The numbering, but not the text, of the following section was changed in 2003 in H.B. 374. The reference will be corrected in a nonsubstantive change after this filing is made.

Subsection 31A-23-219(1) provides the commissioner with authority to establish by rule the form by which insurers report to the department appointments and the termination of these appointments. Section R590-101-4 sets the guidelines for the reporting of appointments and terminations by companies. (DAR NOTE: H.B. 374 (2003) is found at Chapter 298, Laws of Utah 2003, and was effective 05/05/2003.)

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 regarding this rule were received by the department in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued in force because under Subsection 31A-23-219(1), the insurer is required to report all new appointments and terminations "at intervals and in the form the commissioner establishes by rule." This rule addresses the intervals and the form for reporting. It is important to keep the rule in force in order to help the department to identify who is or is not authorized to represent the insurers as this assists us in monitoring the industry to protect the public and to assist in the resolution of consumer complaints, and investigations of wrongdoing, etc.

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](mailto:jwhitby@utah.gov)

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 04/16/2007

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](mailto:jwhitby@utah.gov)

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 04/13/2007

Insurance, Administration  
**R590-108**

Interest Rate During Grace Period or  
Upon Reinstatement of Policy

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

DAR FILE No.: 29814  
FILED: 04/13/2007, 16:04

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) gives the commissioner the authority to make rules to implement Title 31A. Sections 31A-22-402 and 31A-2-407 authorize the commissioner to establish by rule the rate of interest an insurer may charge in a life insurance or annuity contract upon premiums due or overdue during a grace period or upon subsequent reinstatement of the contract. Section R590-108-4 of the rule sets the rate of interest to be charged.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received any written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule should be continued in force because it provides the maximum interest rate that may be charged and so is a consumer protection against an unreasonably high interest rate.

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.

Insurance, Administration  
**R590-118**

Licensing Examination Rule

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

DAR FILE No.: 29813  
FILED: 04/13/2007, 15:48

**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 31A-2-201 authorizes the commissioner to enact rules to implement Title 31A. The numbering, but not the text, of the following sections was changed in 2003 in H.B. 374. The references will be corrected in a nonsubstantive change after this filing is made. Sections 31A-23-207, 31A-26-207, and 31A-23-211 set licensing examination requirements for agents, adjusters, and title agents. Sections R590-118-4 and R590-118-5 of the rule implement the requirements of the above code sections permitting the commissioner to require and provide for the administration of license examinations. The rule also sets standards and procedures for licensing classes, and any exemptions to these requirements. (DAR NOTE: H.B. 374 (2003) is found at Chapter 298, Laws of Utah 2003, and was effective 05/05/2003.)

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 regarding this rule have been received in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued in force because it allows the public to be aware of licensing requirements, what is and is not acceptable for acknowledging examination score reports or designations in lieu of examinations, and informs them of the requirements to receive a license based on an examination.

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](mailto:jwhitby@utah.gov)

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 04/13/2007

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](mailto:jwhitby@utah.gov)

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 04/16/2007

Insurance, Administration  
**R590-120**  
Surety Bond Forms

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

DAR FILE No.: 29823  
FILED: 04/16/2007, 14:05

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) authorizes the commissioner to write rules to implement Title 31A. Subsection 31A-21-101(5) authorizes rules exempting classes of insurance contracts from any or all provisions of Chapter 21, Insurance Contracts in General. Section R590-120-3 of the rule specifies those exemptions from specific sections of Title 31A, Chapter 21.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no written comments in the past five years regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides uniformity in bail bond forms. Prior to the rule, bailees did not understand their responsibilities nor how their collateral would be handled. Because of this rule, bailees are informed with similar language of their responsibilities and how their collateral will be handled. Therefore, this rule should be continued.

Insurance, Administration  
**R590-146**  
Medicare Supplement Insurance  
Standards

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

DAR FILE No.: 29822  
FILED: 04/16/2007, 11:51

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-620(3)(c) requires the commissioner to adopt rules to establish minimum standards for individual and group Medicare supplement insurance. The rule sets standards for policy provisions, benefits, the standard benefit plan, open enrollment, guaranteed issue, claim payment, loss ratio, refunds, filing and approval of policies, certificates and premium rates, permitted compensation arrangements and disclosure provisions, application forms, replacement forms, and Medicare Select policies.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: In mid-2005 this rule was amended and comments were received. Comments included: 1) grammatical changes; 2) elimination of duplicate and redundant language; 3) request to add a provision listing the plans to which people are entitled if they are eligible for guaranteed issue; 4) suggested the outline of coverage be incorporated; 5) bracketing in the outline of coverage be corrected; 6) the reference to the outpatient drug deductible in Plan J be removed; and 7) add an effective date section to implement some changes in the rule in 2006. No other comments were received outside of that comment period regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is the guidance for the Medicare Supplement plans sold in our state. Citizens may be harmed without this rule. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [jwhitby@utah.gov](mailto:jwhitby@utah.gov)

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 04/16/2007



## Natural Resources, Wildlife Resources **R657-27** License Agent Procedures

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

DAR File No.: 29794  
FILED: 04/04/2007, 09:06

### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under Section 23-19-15, this rule provides the application procedures, standards, and requirements for wildlife license agents.

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 supporting or opposing Rule R657-27 were received since 04/10/2002, when the rule was last reviewed.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-27 provides the application procedures, standards, and requirements for wildlife license agents. The Division of Wildlife Resources (DWR) oversees more than 300 license agents; this rule is required to keep consistency among the agents and to ensure they are following Wildlife guidelines with the issuance of

hunting licenses and permits. Continuation of this rule is necessary for continued success of this program.

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](mailto:stacicoons@utah.gov)

AUTHORIZED BY: James F Karpowitz, Director

EFFECTIVE: 04/04/2007



## Natural Resources, Wildlife Resources **R657-50** Error Remedy

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

DAR FILE No.: 29795  
FILED: 04/04/2007, 09:09

### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under Sections 23-14-19, 23-19-1, and 23-19-38, this rule is established to provide guidelines for identifying and resolving errors resulting in the: a) rejection of a wildlife document application; b) denial of a wildlife document; or c) incorrect issuance of a wildlife document. This rule provides standards and procedures in the identification and resolution of division errors, third party errors, and petitioner errors.

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 supporting or opposing Rule R657-50 were received since 04/16/2002, when the rule was implemented.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-50 provides the Division of Wildlife Resources (DWR) a guideline for identifying and correcting errors that are made through out the division programs. This rule provides standards and criteria for resolving errors. Continuation of this rule is necessary for continued success of the division.

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

AUTHORIZED BY: James F Karpowitz, Director

EFFECTIVE: 04/04/2007



**End of the Five-Year Notices of Review and Statements of Continuation Section**

## NOTICES OF EXPIRED RULES

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Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (*Utah Code* Section 63-46a-9 (1996)). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules (Division). However, if the agency fails to file either the review or the extension by the five-year anniversary date of the rule, the rule expires. Upon expiration of the rule, the Division is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule, and it must follow regular rulemaking procedures to replace the rule if necessary.

The rules listed below were *not* reviewed in accordance with Section 63-46a-9 (1996). These rules have expired and have been removed from the *Utah Administrative Code*. The expiration of administrative rules for failure to comply with the five-year review requirement is governed by *Utah Code* Subsection 63-46a-9(8) (1996).

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### Natural Resources

#### Forestry, Fire and State Lands

No. 29800: **R652-130**. Leaf-it-to-us, Children's Crusade for Trees Administration.

ENACTED OR LAST REVIEWED: 04/02/2002 (No. 24682, 5YR, filed 04/02/2002 at 2:26 p.m., published 05/01/2002)

EXPIRED: 04/03/2007

**End of the Notices of Expired Rules Section**

## NOTICES OF RULE EFFECTIVE DATES

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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).

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### Abbreviations

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

### Administrative Services

#### Facilities Construction and Management

No. 29474 (AMD): R23-25. Administrative Rules Adjudicative Proceedings.  
Published: February 15, 2007  
Effective: April 11, 2007

### Commerce

#### Real Estate

No. 29517 (AMD): R162-202-1. Licensing Examination.  
Published: March 1, 2007  
Effective: April 10, 2007

No. 29516 (AMD): R162-203. Change to Residential Mortgage Licensure Statement.  
Published: March 1, 2007  
Effective: April 10, 2007

No. 29518 (REP): R162-206. Licensing Examination.  
Published: March 1, 2007  
Effective: April 10, 2007

No. 29519 (AMD): R162-207. License Renewal.  
Published: March 1, 2007  
Effective: April 10, 2007

No. 29520 (AMD): R162-208. Continuing Education.  
Published: March 1, 2007  
Effective: April 10, 2007

### Health

#### Health Systems Improvement, Licensing

No. 29525 (AMD): R432-100-33. General Hospital Standards.  
Published: March 1, 2007  
Effective: April 11, 2007

### Insurance

#### Administration

No. 29431 (AMD): R590-126-4. Prohibited Policy Provisions.  
Published: February 15, 2007  
Effective: April 9, 2007

No. 29430 (AMD): R590-236. HIPAA Eligibility Following Receipt of a Certificate of Insurability or Denial by an Individual Carrier.

Published: February 15, 2007  
Effective: April 9, 2007

No. 29419 (NEW): R590-239. Exemption of Student Health Centers From Insurance Code.

Published: February 1, 2007  
Effective: April 9, 2007

### Natural Resources

#### Wildlife Resources

No. 29502 (AMD): R657-5-43. General Archery Elk Hunt.

Published: March 1, 2007  
Effective: April 9, 2007

### Science Technology and Research Governing Authority

#### Administration

No. 29298 (NEW): R856-1. Formation and Funding of Utah Science Technology and Research Innovation Teams.

Published: December 15, 2006  
Effective: April 4, 2007

No. 29375 (AMD): R856-1-6. Ongoing Funding for Utah Science Technology and Research Innovation Team.

Published: January 15, 2007  
Effective: April 4, 2007

No. 29299 (NEW): R856-2. Distribution of Utah Science Technology and Research Commercialization Revenues.

Published: December 15, 2006  
Effective: April 4, 2007

### Tax Commission

#### Auditing

No. 29437 (AMD): R865-6F-37. Disclosure of Reportable Transactions and Material adviser List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309.

Published: February 15, 2007  
Effective: April 16, 2007

No. 29436 (AMD): R865-9I-53. Disclosure of Reportable Transactions and Material adviser List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309.

Published: February 15, 2007  
Effective: April 16, 2007

# RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

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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 16, 2007, the effective dates of which are no later than May 1, 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/>).

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## 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
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<u>Administrative Rules</u>					
R15-3-5	Statutory Provisions that Require Rulemaking Pursuant to Subsection 63-46a-4(11)	29554	AMD	04/30/2007	2007-6/5
<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

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R28-1	State Surplus Property Disposal	29550	5YR	02/26/2007	2007-6/36
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<b>Agriculture and Food</b>					
<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
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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
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R68-20	Utah Organic Standards	29347	AMD	02/28/2007	2007-1/6
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R70-201	Compliance Procedures	29492	5YR	02/02/2007	2007-5/21
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R70-350	Ice Cream and Frozen Dairy Foods Standards	29499	5YR	02/05/2007	2007-5/22
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<b>Alcoholic Beverage Control</b>					
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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
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R156-11a	Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rules	29432	AMD	03/27/2007	2007-4/9
R156-11a	Cosmetologist/Barber, Esthetician, Electrologist and Nail Technician Licensing Act Rule	29810	5YR	04/12/2007	2007-9/33
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
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R156-28	Veterinary Practice Act Rules	29472	5YR	02/01/2007	2007-4/57
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R156-42a	Occupational Therapy Practice Act Rules	29356	AMD	02/22/2007	2007-2/11
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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
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R162-106	Professional Conduct	29521	5YR	02/15/2007	2007-5/25
R162-106-5	Failure to Respond to Investigation	29546	AMD	04/25/2007	2007-6/6
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R162-207	License Renewal	29519	AMD	04/10/2007	2007-5/7
R162-208	Continuing Education	29520	AMD	04/10/2007	2007-5/10
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R207-2	Policy for Commissions, Purchases, and Donations to, and Loans from, the Utah State Art Collections	29529	NSC	03/08/2007	Not Printed

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R251-107	Executions	29533	AMD	05/01/2007	2007-6/11
R251-305	Visiting at Community Correctional Centers	29462	5YR	01/31/2007	2007-4/58
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R251-710	Search	29465	5YR	01/31/2007	2007-4/59

**Crime Victim Reparations**

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R277-511	Highly Qualified Teacher Grants	29305	NEW	01/23/2007	2006-24/7
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R307-110-13	Section IX, Control Measures for Area and Point Sources, Part D, Ozone	29001	AMD	03/09/2007	2006-19/30
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R307-110-36	Section XXII, Interstate Transport	29293	NSC	02/09/2007	Not Printed
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R307-222	Emission Standards: Existing Incinerators for Hospital, Medical, Infectious Waste	29657	5YR	03/15/2007	2007-7/157
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R307-301	Utah and Weber Counties: Oxygenated Gasoline Program As a Contingency Measure	29660	5YR	03/15/2007	2007-7/158
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R307-320	Davis, Salt Lake and Utah Counties, and Ogden City: Employer-Based Trip Reduction Program	29002	AMD	03/09/2007	2006-19/32
R307-320	Ozone Maintenance Areas and Ogden City: Employer-Based Trip Reduction Program	29663	5YR	03/15/2007	2007-7/160
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R307-325	Davis and Salt Lake Counties and Ozone Nonattainment Areas: Ozone Provisions	29003	AMD	03/09/2007	2006-19/35
R307-325	Ozone Nonattainment and Maintenance Areas: General Requirements	29664	5YR	03/15/2007	2007-7/160
R307-326	Davis and Salt Lake Counties and Ozone Nonattainment Areas: Control of Hydrocarbon Emissions in Refineries	29006	AMD	03/09/2007	2006-19/37

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R307-326	Ozone Nonattainment and Maintenance Areas: Control of Hydrocarbon Emissions in Petroleum Refineries	29665	5YR	03/15/2007	2007-7/161
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**ABBREVIATIONS**

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

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	29757	R652-5	5YR	04/02/2007	2007-8/132
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	29315	R865-9I-49	AMD	02/12/2007	2007-1/43
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